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COTTONI POSTHUMA:

Divers Choice Pieces

of that renowned antiquary,

**SIR ROBERT COTTON,
knight and baronet.**

**Preserved from the Injury of Time, and
to publick light, for the benefit
Posterity.**

By J. H. Esq;

**Edited by
Edmund Goldsmid, F.R.H.S.**

Vol. I.

**Privately Printed.
Edinburgh.
1884.**

Cottoni Posthuma:
DIVERS
CHOICE PIECES
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Sir ROBERT COTTON,
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By J. H. Esq;

London, Printed by M. C. for C. Harper, and are to be Sold by W. Hensman and T. Fox, at the Kings Arms, and at the Angel in Westminster-Hall, 1679.



To his worthily Honoured
Friend, Sir *Robert Pye* Knight,
at his House in *Westminster*.

THE long interest of Friendship, and nearness of Neighbourhood, which gave you the opportunity of conversing often with that worthy Baronet, who was Author of these ensuing Discourses, induced me to this Dedicatory Address. Among the Greeks and Romans (who were the two Luminaries that first diffused the rayes of Knowledge and Civility through these North-west Climes,) He was put in the rank of the best sorts of Patriots, who preserv'd from putrefaction and the rust of Time, the Memory and Works of Vertuous Men, by exposing them to open light for the general good; Therefore I hope not to deserve ill of my Country, that I have published to the World these choice notions of that Learned Knight Sir Robert Cotton, who for his exact *recerchez* into Antiquity, hath made himself famous to Posterity.

Plutarch in writing the lives of others, made his own everlasting: So an Antiquary, while he feels

the pulse of former Ages, and makes them known to the present, renders himself long liv'd to the future.

There was another inducement that moved me to this choice of Dedication, and it was the high respects I owe you upon sunnary obligations, and consequently the desire I had that both the present and after times might bear witness how much I am, and was,

SIR,

3. *Nonas April.*
1651.

Your humble and,
truly devoted
Servant,
James Howel.





*To the knowing Reader, touching
these following Discourses, and their*
AUTHOR.

THE memory of some men is like the *Rose*, and other odoriferous flowers, which cast a sweeter and stronger smell after they are pluck'd: The memory of others may be said to be like the *Poppie*, and such Vegetals that make a gay and specious shew while they stand upon the stalk, but being cut and gather'd, they have but an ill-favour'd scent: This worthy Knight may be compared to the first sort, as well for the sweet odor (of a good name) he had while he stood, as also after he was cut down by the common stroke of Mortality: Now to augment the fragrancy of his Vertues and Memory, these following Discourses, which I may term, not altogether improperly a *Posie* of sundry differing Flowers, are expos'd to the World.

All whoever knew this well-weighed Knight, will confess what a great Zeal he was to his

Countrey, how in all Parliaments, where he served so often, his main endeavours were to assert the publick Liberty, and that *Prerogative* and *Priviledge* might run in their due Channels: He would often say, *That he himself had the least share in himself*, but his Countrey and his Friends had the greatest interest in him: He might be said to be in a perpetual pursuit after Vertue and Knowledge; He was indefatigable in the search and research of Antiquity, and that in a generous costly manner, as appears in his Archives and copious Library; therefore he may well deserve to be ranked among those Worthies—*Quorum Imagines lambunt Hederæ sequaces*; for an Anti-quary is not unfitly compared to the *Ivie*, who useth to cling unto ancient Fabriques and Vegetals.



In these Discourses you have

1. *A Relation of proceedings against Ambassadors who have miscarried themselves, and exceeded their Commission.*
2. *That the Kings of England have been pleased to consult with their Peers in Parliament for Marriage of their Children, and touching Peace and War, etc.*
3. *That the Sovereigns Person is required in Parliament in all Consultations and Conclusions.*
4. *A Discourse of the legality of Combats, Duels, or Camp-fight.*
5. *Touching the question of Precedency between England and Spain.*
6. *Touching the Alliances and Amity which have intervened betwixt the Houses of Austria and England.*
7. *A Discourse touching Popish Recusants, Jesuits and Seminaries.*
8. *The Manner and Means how the Kings of England have supported and improved their States.*
9. *An Answer to certain Arguments urged by a Member of the House of Commons, and raised from supposed Antiquity, to prove that Ecclesiastical Laws ought to be Enacted by Temporal men.*
10. *The Arguments produc'd by the House of Commons concerning the Priviledge of every Free-born Subject.*

11. *A Speech delivered in the House of Commons Assembled at Oxford in the first year of the King.*
12. *A Speech delivered before the Council Table, touching the alteration of Coin.*
13. *Valour Anatomized in a Fancy, by Sir Philip Sidney.*
14. *A brief Discourse concerning the Power of the Peers and Commons of Parliament, in point of Judicature.*
15. *Honesty, Ambition and Fortitude Anatomized by Sir Francis Walsingham.*
16. *The Life and Reign of Henry the Third, compiled in a Critical way.*

These Discourses being judiciously read, will much tend to the enriching of the understanding, and improvement of the Common stock of Knowledge.

In the copy in my possession, between Nos. 12 and 13 is inserted "The Danger wherein this Kingdom now standeth, and the Remedy." After No. 13 comes No. 15; then No. 14. No. 16 is not given; yet the book is evidently complete.—*E. G.*





A
RELATION
OF THE
PROCEEDINGS
AGAINST
AMBASSADORS

Who have miscarried themselves,
&c.

IN humble obedience to your Graces Command, I am emboldened to present my poor advice to this the greatest, and most important cause that ever happened in this State, the Quiet of the Kingdom, the honour of the Prince, the safety of the *Spanish* Ambassadors Person, exposed hereby to the fury of the people, all herein involved : A consideration not the least for the reputation of the State and Government, though he little deserve it.

The information made to his sacred Majesty by him, That your *Grace* should have plotted this Parliament ; Wherein if his Majesty did not accord to your designs, then by the Authority of this Parliament to confine his sacred Person to some

place of pleasure, and transfer the Regal Power upon the Prince : This Information, if it were made by a Subject, by the Laws of the Realm were High Treason, to breed a rupture between the Sovereignty and the Nobility, either by Reports or Writings, and by the Common Law is adjudged no less : The Author yet knowing that by the representing the Person of a Sovereign Prince he is by the Law of Nations exempt from Legal Tryal, all actions of one so qualified being made the Act of his Master, until he disavow : And injuries of one absolute Prince to another, is *Factum hostilitatis*, and not *Treason*. The immunity of whom *Civilians* collect as they do the rest of their grounds from the practice of the *Roman* State, deducing their Arguments from these Examples. The *Fabii* Ambassadors from *Rome* were turned safe from the *Chades* with demand of justice against them only, although they had been taken bearing Arms with the *Etrurians* their Enemies :¹ The Ambassadors of the *Tarquines* : *Morte affligendos Romani non judicârunt, & quanquam visi sunt ut hostium loco essent, jus tamen Gentium voluit.*² And where those of *Syphax* had plotted the murder of *Masinissa*. *Non aliud mihi factum quàm quod sceleris sui reprehensi essent*, saith *Appian* : The Ambassadors of the Protestants, at the Council of *Trent*, though divulging there the Doctrine of the Churches, contrary to a Decree there enacted, a crime equivalent to *Treason*, yet stood they pro-

¹ *Titus Livius* 2. dec.

² *Eivius*.

tected from any punishment.¹ So much doth public conveniency prevail against a particular mischief; That the State of *Rome*, though in case of the most capital crime, exempted the *Tribunes* of the people from question during the year of office: And the *Civilians* all consent, that *Legis de Jure Gentium indictum est, ut eorum corpora salva sint, propter necessitatem legationis, ac ne confundant jura commercii inter Principes.*² The redress of such injuries, by such persons, the example of Modern and best times will lead us to. *Vivia* the *Popes* Legate was restrained by *Henry* the Second, for exercising a power in his Realm, not admitted by the King, in disquiet of the State, and forced to swear not to act any thing in *Præjudicium Regis vel Regni.*³ *Hen.* 3. did the like to one of the *Popes* Ambassadors, another flying the Realm secretly, fearing, *timens pelli sui*, as the Record saith, *Edward.* 1. so restraining another until he had, as his Progenitors had, informed the *Pope* of the fault of his Minister, and received satisfaction of the wrongs.⁴ In the year 1523, *Lewis de Pratt*: Ambassador for *Charles* 5. was commanded to his house, for accusing falsely *Cardinal Wolsey* to have practised a breach between *Hen.* 8. and his Master, to make up the Amity with the *French* King; ⁵ *Sir Michael Throgmorton* by *Charles* the 9. of *France*, was so served, for

¹ *Acta Triden. Concil.*

² *August. de legibus Antiq. Roman.*

³ *Benedict. in vita Hen. 2.*

⁴ Record. in *Scaccar. West. Claus. Edw. 1.*

⁵ *Lewis* in the Paper Chart. 1523.

being too busie with the *Prince of Conde* in his faction. Doctor *Man* in the year 1567. was taken from his own house in *Madrid*, and put under a Guard to a straiter Lodging for breeding a Scandal (as the *Conde Teri* said) in using by warrant of his Place, the Religion of his Country, although he alledged the like permitted to *Ghusman de Sylva* their Ambassador, and to the *Turk* no less than in *Spain*. In the year 1568. *Don Ghuernon d'Estes* was ordered to keep his house in *London*, for sending scandalous Letters to the *Duke d'Alva* unsealed. The Bishop of *Rosse* in the year 1571. was first confined to his house, after to the Tower, then committed for a good space to the Bishop of *Ely* his care, for meddling with more business than belonged to the place of his imployment: The like was done to Dr. *Alpin* and *Malvisett* the *French* Ambassadors successively, for being busie in more than their Masters affairs. In the time of *Philip* the second of *Spain*, the *Venetian* Ambassador in *Madrid*, protecting an offender that fled into his house, and denying the Alcalds or Justices to enter his house, where the Ambassador stood armed to withstand them, and one *Bodavario* a *Venetian*, whom they committed to Prison, for his unruly carriage, and they removed the Ambassador unto another house, until they had searched and found the Offender: Then conducting back the Ambassador, set a guard upon his house, to stay the fury of the people enraged. The Ambassador complaining to the King, he remitted it to the Supreme Council; they justified the proceedings,

condemning *Bodavario* to lose his head, and other the Ambassadors servants to the Galleys, all which the King turned to banishment, sending the whole process to *Inego de Mendoza* his Ambassador at *Venice*, and declaring by a publick Ordinance unto that *State*, and all other Princes, that in case his Ambassadors should commit any offence, unworthily, and disagreeing to their professions, they should not then enjoy the priviledg of those Officers, referring them to be judged by them where they then resided. *Bernardino de Mendoza*, for traducing falsly the Ministers of the State to further his seditious Plots, was restrained first, and after commanded away in the year 1586. The last of *Spanish* Instruments that disquieted this State, a benefit we found many years after by their absence, and feel the want of it now by their reduction.

Having thus shortly touched upon such precedent examples, as have fallen in the way of my poor observation, I humbly crave pardon to offer up my simple opinion what course may be had of prosecution of this urgent cause. I conceive it not unfit, that with the best of speed, some of the chief Secretaries were sent to the Ambassador by way of advice, that they understanding a notice of this information amongst the common people, that they cannot but conceive a just fear of uncivil carriage towards his Lordship or his followers, if any the least incitement should arise; and therefore for quiet of the State, and security of his person, they were bound in love to his Lordship to restrain, as well himself as followers, until a further course

be taken by legal examination, where this aspersion begun, the way they only conceived secure to prevent the danger ; this fear in likelihood will be the best motive to induce the Ambassador to make discovery of his intelligence, when it shall be required : I conceive it then most fit, that the Prince and your Grace to morrow should complain of this in *Parliament*, and leaving it so to their advice and justice, to depart the House, the Lords at the instant to crave a conference of some small number of the Commons, and so conclude of a Message to be sent to the Ambassador to require from him the charge and proofs ; the Persons to be sent, the two Speakers of the two Houses with some convenient company of either, to have their Maces and ensigns of Office borne before them to the Ambassadors Gate, and then forborn to shew fair respect to the Ambassadors, then to tell them that a relation being made that day in open Parliament of the former information to the King by his Lordship, they were deputed from both Houses, the great Council of the Kingdom, to which, by the fundamental Law of the State, the chief care of the Kings safety and public quiet is committed, they were no less the high Court of Justice, or *Supersedeas* to all others, for the examining and correcting all attempts of so high a nature as this, if it carry truth ; That they regarded the honour of the State, for the Catholicks immoderate using of late the Lenity of Sovereign *Grace* to the scandal and offence of too many, and this aspersion now newly reflecting upon the Prince and others, meet-

ing with the former distaste (which all in public conceive to make a plot to breed a rupture between the King and State, by that party maliciously layd) has so inflamed and sharpned the minds of most, that by the access of people to Term and Parliament, the City more filled than usual, and the time it self near *May* day (a time by custom apted more to licentious liberty than any other) cannot but breed a just jealousie and fear of some disorder likely to ensue of this information, if it be not aforehand taken up by a fair legal tryal in that High Court : Neither want there fearful examples in this kind in the Ambassadors of *Genoa* upon a far less ground in the time of Parliament, and his house demolished by such a seditious tumult : The Parliament therefore, as well to secure his Lordships person, followers and friends, from such outrages, as to preserve the honour of the State, which needs must suffer blemish in such misfortunes, they were sent thither to require a fair discovery of the ground that led his Lordship so to inform the King. That they might so thereupon provide in Justice and Honour, and that the reverence they bear unto the dignity of his Master, may appear the more by the mannerly carriage of this Message, the two that are never employed but to the King alone, were at this time sent, and that if by negligence of this fair acceptance, there should happen out any such disaster and danger, the World and they must justly judg as his own fault. If upon the delivery of this Message the Ambassador shall tell his charge, and discover his intelligence,

then there will be a plain ground for the Parliament to proceed in Examination and Judgment; but if (as I believe) he will refuse it, then is he *Author Scandali* both by the Common and Civil Laws of this Realm, and the Parliament may adjudg it false and untrue, and declare by a publick Act, the Prince and your Grace innocent, as was that of the Duke of *Gloucester*, 2 *Rich.* 2. and of *York* in *Henry* the sixth his time, then may the Parliament joyntly become Petitioners to his Majesty, first to confine his Ambassador to his house, restraining his departure, until his Majesty be acquainted with his offence, and aswel for security as for further practice to put a Guard upon the place, and to make a Proclamation that none of the Kings Subjects shall repair to his house without express leave: and to send withal a Letter, with all speed, of complaint against him to the King of *Spain*, together with a Declaration under the Seals of all the Nobility, and Speaker of the Commons in their names as was 44 *Hen.* 3. to the Pope, against his Legate, and 28 *Edw.* 1. Requiring such Justice to be done in this case, as by the Leagues of Amity, and the Law of Nations is usual, which if the King of *Spain* refuse, or delay, then it is *Transactio Criminis* upon himself, and an absolution of all Amity and friendly intelligence, and amounts to no less than a War denounced. Thus have I by your leave, and command, delivered my poor opinion, and ever will be ready to do your Grace the best service, when you please to command it.

THAT THE
K I N G S
OF
E N G L A N D

Have been pleased, usually,
to Consult

WITH THEIR
P E E R S
IN THE
GREAT COUNCIL,
AND

Commons in *Parliament*,
Of Marriage, Peace, and War.

Written by Sir *ROBERT COTTON*,
Knight and Baronet, *Anno* 1621.

LONDON: Printed in the Year 1679.





THAT THE
K I N G S
OF
E N G L A N D
Have been pleased, usually, to Consult
WITH THEIR
P E E R S
IN THE
Great Council, &c.

TO search so high as the *Norman* Conquest, it is necessary to lay down the form and Government of those times, wherein the state of affairs then lead in another form of publick Councils ; for the people brought under by the Sword of *William*, and his followers to subjected vassallage, could not possess in such Assemblies the right of their former liberties, division and power having mastered them, and none of

their old Nobility being left either of credit or fortune ; what he retained not in providence as the Demesnes of the Crown, or reserved not in piety for the maintenance of the Church, he parted to those Strangers that sailed along with him in the Bark of his adventure, leaving the Natives (for the most part) as appeareth by his survey in no better condition than Villenage ; He moulded their Customs to the manner of his own Country, and forbore to grant the Laws of the Holy *Edward* so often called for.¹

To supply his occasions of men, mony, or provisions, he Ordered that all those that enjoyed any fruit of his Conquest, should hold their Lands proportionably by so many Knights fees of the Crown, and admitted them to infeoff their followers, with such part as they pleased of their own portions, which to ease their charge they did in his and his Sons time, by two infeoffments, the one *de novo*, the other *de veteri* ;² This course provided him the body of his War, the money and provision was by Hydage assessed on the common people ;³ at the consent of their Lords, who held in all their Signiories such right of regality, that to their Vassals (as *Paris* saith) *quot Domini tot Tyranni*, and proved to the King so great a curb and restraint of power, that nothing fell into the care of Majesty after, more than to retrench the

¹ Malmsbury.

² Ex lib. feud. in Scacc.

³ Ex lib. pub. in Scacc.

force of this Aristocracy that was like in time to strangle the Monarchy.¹

Though others foresaw the mischief betimes, yet none attempted the remedy, until King *John*, whose over-hasty undertakings, brought in those broyls of the Barons Wars.²

There needed not before this care to advise with the Commons in any publick assemblies, when every man in *England* by tenure held himself to his great Lords will, whose presence was ever required in those Great Councils ; and in whose assent his dependent Tenants consent was ever included.

Before this Kings time then, we seek in vain for any Council called, the first, as may be gathered (though darkly by the Record) used their Counsels and assents in the sixth year of his Reign.³

Here is the first summons, in Records, to the Peers or Barons, *Tractaturi de magnis, & arduis negotiis*, it was about a War of defence against the *French* ; And that the Commons were admitted at this time, may be fitly gathered by this Ordinance, viz. *Provisum est assensu Archiepiscoporum, Comitum, Baronum, & omnium fidelium nostrorum Angliæ, quod novem milites per Angliam inveniend. decimarum, &c.* and this was directed to all the Sheriffs in *England*, the ancient use in publishing Laws : From this there is a breach until the 18 *Hen. 3.* where the next summons extant is in a

¹ Chron. de Dunstable. Mat. Paris Benedictus Monachus in vita Hen. 2,

² Gervas, Dorch. Roger Wendover.

³ Claus. 6. Joh. in 3. Dorso.

Plea Roll of that year, but the Ordinances are lost ;¹ From hence the Records afford us no light until the 49 of the same King, where then the form of summons to Bishops, Lords, Knights, and Burgesses, are much the same in manner, though not in matter, to those of our times.²

This Parliament was called to advise with the King *pro pace assecuranda & firmanda*, they are the words of the Writ, and where advice is required, consultation must needs be admitted.

To this King succeeded *Edward* his Son, a wise, a just, and fortunate Prince ; in his Reign, and so long to the fourth of his Grandchild, we have no light of publick Councils in this kind, but what we borrow in the Rolls of Summons, wherein the form stood various according to the occasions, until it grew constant in the form it is now, about the entrance of *Rich. 2.* The Journals Rolls being spoiled, by the injury of times or private ends.³

This King, in the fifth of his Reign, called a Parliament, and therein advised with his Lords and Commons for suppressing of *Llewellen* Prince of *Wales*,⁴ and hearing that the *French* King intended to invade some pieces of his Inheritance in *France*, he summoned a Parliament, *Ad tractand. ordinand. & faciend, cum Prælatiis, Proceribus & aliis Incolis Regni quibuslibet hujusmodi peri-*

¹ Petit. 18.

² Claus. 49. Hen, 3. in 11. Dors.

³ Ex Rot. Parl. in Archivis London.

⁴ Claus 5 Edw. 1. in 12.

*culis & excogitatis malis sit objurand.*¹ Inserting in the Writ that it was *Lex justissima, provida circumspectione stubilit*: That *Quod omnes tangit ab omnibus approbetur*. In 34. *Super ordinatione & stabilimento Regis Scotiæ*, he made the like Convention.²

His Son the second *Edward*, *pro solennitate Sponsalium & Coronationis*, consulted with his people in his first year; in his sixth year, *super diversis negotiis statum regni, & expeditionem Guerræ Scotiæ specialiter tangentibus*, he assembled the State to advise, the like he did in the eighth.³

The *French* King having invaded *Gascoin*, in the thirteenth year the Parliament was called, *super arduis negotiis statum Gasconie tangentibus*. And in 16. to consult *ad refrænand. Scotorum obstinentiam & militiam*.⁴

Before that *Edward* the 3. in his first year would resolve whether Peace or War with the *Scottish* King, he summoned the Peers and Commons, *super præmissis tractare & consilium impendere*.⁵

The Chancellor in *Anno quinto* declareth from the King the cause of that Assembly, And that it was to consult and resolve, whether the King

¹ Rot. Parl. Anno 7 Edw. 1.

² Claus. 7. Edw. 1. in 3. Dors. Claus. 34. Ed. 1. in dors.

³ Claus. 1. Edw. 2. in 19. in dors. Claus. 6. Ed. 2. in 3. in dors. Claus. 8. in 3. in dors.

⁴ Claus. 13. Ed. 2. in 13. in dors. Claus. 16. E. 2. in 27. in dors.

⁵ Claus. 1. Ed. 3. in dors.

should proceed with *France* for recovery of his Signiories, by alliance of marriage, or by War? And whether to suppress the disobedience of the *Irish*, he should pass thither in Person or no?¹

The year following he re-assembleth his Lords and Commons, and requireth their advice, whether he should undertake the Holy Expedition with the *French* King that year, or no? The Bishops and Proctors of the Clergy would not be present, as forbidden by the Canons such Councils, the Peers and Commons consult, applauding the Religious and Princely forwardness of their Sovereign to this holy enterprize, but humbly advise a forbearance this year for urgent occasions.²

The same year, though at another Sessions, the King demanded the advice of his people, Whether he should pass into *France* to an interview as was desired for the expediting the Treaty of Marriage: the Prelates by themselves, the Earls and Barons by themselves, and the Knights of the Shires by themselves, consulted apart, for so is the Record; and in the end resolved, That to prevent some dangers likely to arise from the North, it would please the the King to forbear his journey, and to draw towards those parts where the perils were feared, his presence being the best prevention; which advice he followed.³

In the following *Parliament* at *York* the King

¹ Rot. Parl. 5. Edw. 3.

² Parl. 6. Edw. 3.

³ Rot. Parl. 6. Edw. 3. Sess. 2. in 6.

sheweth how by their former advice he had drawn himself towards the North parts, and now again had assembled them to advise further for his proceedings, to which the Lords and Commons having consulted apart, pray further time to resolve, until a full assembly of the State, to which the King granting, adjourneth that Sessions.¹ At the next meeting they are charged upon their Allegiance and Faith, to give the King their best advice; the Peers and Commons consulting apart, deliver their opinions, and so the Parliament ended.²

In the 13 year the Grands and Commons are called to consult and advise how the Domestick quiet may be preserved, the Marches of *Scotland* defended, and the Sea secured from forreign Enemies; the Peers and Commons having apart consulted, the Commons after their desire not to be charged to counsel in things *Des queux ils n'ont pas cognizance*, answer, That the Guardians of the Shires, assisted by the Knights, may effect the first, if pardons of Felony be not granted.³

The care of the Marches they humbly leave to the King and his Council, and for the safeguard of the Seas, they wish that the Cinque Ports, and Marine towns, discharged for the most part from the main burthens of the In-land parts may have that left to their charge and care, and that such as

¹ Rot. Parl. 7. Edw. 3.

² Rot. Parl 7. Edw. 3. Sess. 2. Parl. 7. Edw. 3. in 6.

³ Rot. Parl. 13. Edw. 3.

have lands neer the Coasts be commanded to reside on those possessions.

The Parliament is the same year reassembled *Avisamento Prælatorum, procerum, necnon communitatis*, to advise *de expeditione guerræ in partibus transmarinis*; at this, Ordinances are made for provision of Ships, arraying of men for the Marches, and defence of the Isle of Jersey, naming such in the Record, as they conceive fit for the employment.¹

The next year *De la Pool* accounteth in Parliament the expenses of the Wars, a new aid is granted, and by several Committees in which divers are named that were no Peers of Parliament, the safeguard of the Seas, and defence of the borders are consulted of.²

In the 15 year, *De assensu Prælatorum Procerum & aliorum de consilio*, the Kings passage into France is resolved of. Anno 17. *Badlesmere*, instead of the Council declareth to the Peers and Commons, That whereas by their assents the King had undertaken the Wars in France, and that by mediation of the Pope a truce was offered, which then their Sovereign forbore to entertain without their well allowance; the Lords consult apart, and so the Commons returning by Sir *William Trussel* an answer, their advice and desire is to compose the Quarrel, approve the Truce, and the Popes mediation.

¹ Rot. Parl. 13: Edw. 3. Sess. 2.

² Parl. 14: Ed. 3.

The Popes undertaking proving fruitless, and delays to the *French* advantage, who in the mean space allied with *Scotland* and others, practised to root out the *English* Nation in *France*: This King again assembled the year following, in which the Peers and Commons after many days meditation, resolve to end either by Battel or Peace, and no more to trust upon the mediation or message of his Holiness.¹

In the 21 year, the chief Justice *Thorpe* declaring to the Peers and Commons that the *French* Wars began by their advice first, the Truce after by their assents accepted, and now ended, the Kings pleasure was to have their Counsels in the prosecution, the Commons being commanded, *Que ils se deveroyent trait ensemble & se quilz enschenteroient monstrer au Roy & au gravitur de son consilio*, Who after four days consulting, humbly desire the King to be advised by his Lords and others, more experienced than themselves in such affairs.²

To advise the King the best for his *French* imployments, a Parliament was summoned *Anno* 25. Herein the King for a more quick dispatch willeth the Commons to elect 24 or 30 of their House to consult with the Lords, these to relate to their fellows, and the conclusion general by the Lords to the Kings.³

In the 27 a Great Council is assembled, many

¹ Rot. Parl. 18. Edw. 3. ² Rot. Parl. 21. Edw. 3.

³ Parl. 25. Ed. 3.

of the lay Peers, few of the Clergy, and of the Shires and Burroughs but one a piece.¹

This was for the prosecution of the *French Wars*, when honourable peace could not be gotten; but the year following a Truce offered, the King forbore to entertain, until he had the consent of the Peers and Commons, which they in Parliament accorded unto before the Popes Notary, by publick Instrument.²

The dallying of the *French King* in conclusion of peace, and the falling off of the Duke of *Brittany*, having wrought his end with *France* by reputation of the *English* succour, is the year following declared in Parliament, and their advice and aid required for the Kings proceeding.³

In the 36 year he called a Parliament to consult whether War or Peace by *David King of Scots* then offered, should be accepted?⁴

In the 40 the Pope demanded the tribute of King *John*, the Parliament assembled, where after consultation apart, the Prelats, Lords, and Commons advise the denial, although it be by the dint of Sword.⁵

In 43. the King declares to the Peers and Commons, that the *French* against the Articles of the Truce, refused payment of the moneys, and delivery of the Towns, summoning *La Brett*, and others the Kings subjects in *Gascony*, to make at

¹ Parl. 27. Ed. 3.

² Parl. 27. Ed. 3.

³ Parl. 29. Ed. 3.

⁴ Parl. 36. Ed. 3.

⁵ Parl. 40. Ed. 3.

Paris their appeals, and had foraged his Town of *Bontion*, requiring, whether on their breach he might not again resume the stile and arms of *France*.¹

The Lords and Commons had apart consulted, they advised the King to both, which he approving, altered the inscription and figure of his Seal.

Two years after it was declared to the Peers and Commons, that by their advice he had again resumed the stile and quarrel of *France*, and therefore called their advice for the defence of the realm against the *French*, securing of the Seas, and pursuing of the War, of which they consult, and resolve to give the King an aid;² the like of Counsel and supply was the year succeeding.³

In the 50 a Parliament to the purposes of the other two was summoned; and the year following the King in Parliament declaring how the *French* combined underhand against him with *Spain* and *Scotland*, required their advice, how Peace at home, the Territories abroad, Security of the Sea, and charge of the War might be maintained.⁴ I have the longer insisted in observing the carriage of these times, so good and glorious, after Ages having not left the Journal entries of Parliament so full, which with a lighter hand I will pass through.

Richard his Grand-child succeeded to the Crown, and troubles, having nothing worthy his

¹ Parl. 43. Ed. 3.

² Parl. 45. Ed. 3.

³ Parl. 46. Ed. 3.

⁴ Parl. 50. Ed. 3.

great fortunes, but his great birth ; the first of his Reign he pursued the Steps of his wise Grandfather, advising with Peers, and Commons how best to resist his Enemies, that had lately wronged many of his Subjects upon the Sea coasts.¹

In the second year he again consulted with his people, how to withstand the *Scots*, who then had combined with the *French* to break the Truce.²

In the third he called the advice of Parliament, how to maintain his regality, impaired by the Popes provision, how to resist *Spain*, *France* and *Scotland*, that had raised Wars against him, how to suppress his Rebels in *Guyen* and *Ireland*, and how to defend the Seas.³

The like in the fourth year following at *Windsor* ;⁴ the year succeeding at a great Council, the King having proposed a voyage Royal into *France*, now called the Parliament to determine further of it ; and it is worthy observation, for the most before any proposition of War or Peace were vented to the Commons, a debate thereof proceeded in the great Council to stay it fitter to popular advice.⁵

The quarrel of *Spain* continuing, the Duke of *Lancaster* offered a Voyage against them, so that the state would lend him money, after consultation they granted aid, but not to bind them to any continuance of Wars with *Spain*.⁶

¹ Parl. 1. Rich. 2. in 5 & 6.

⁴ Parl. 4. Rich. 2. in 2 & 3.

² Parl. 1. Rich. 2. in 7.

⁵ Parl. 5. Rich. 2. in 3.

³ Parl. 3. Rich. 2. in 4. & 5.

⁶ Parl. 5. Sess. 2.

In the 6th the Parliament was called, to consult about defence of the borders, the Kings possessions beyond Sea, *Ireland* and *Gascoyne*, his Subjects in *Portugal*, and safe keeping of the Seas ; and whether the King should proceed by Treaty of Alliance, or the Duke of *Lancaster* by force ; for the Conquest of *Portugal*, the Lords approve the Dukes intention for *Portugal*, and the Commons advise, that *Thomas* Bishop of *Norwich*, having the Popes *Croiceris*, should invade *France*.¹

The same year the State was re-assembled to consult, whether the King should go in person to rescue *Gaunt*, or send his army ; the Commons after two days debate, crave a conference with the Lords ; the effect is not entered in the Roll, only they bid Sir *Thomas Pickering* their Speaker protest, that Counsels for War did aptly belong to the King and his Lords ; yet since the Commons were commanded to give their advice, they humbly wished a Voyage Royal by the King ; if not, that the Bishop of *Norwich* ought with the advantage of the Popes *Croiceris* be used in that service, who accepted the Charge with ill success ; he further for the Commons prayed, that the Kings Unkle should not be spared out of the Realm, before some place be settled with the *Scott*, and that the Lord *de la Sparre* sent with Propositions from *Spain*, may first be heard.²

The Chancellor in the seventh year, in the name of the King willeth the Lords apart, and so the

¹ Parl. 6. Rich. 2.

² Parl. 6. Sess. 2.

Commons, to consult whether Peace or War with *Scotland*, or whether to resist or assail the Kings adventure with *Spain*, *France*, or *Flanders*.¹

Their opinion is not entered in the Rolls (an omission usual by the Clarks neglect) only their Petition is recorded, that the Bishop of *Norwich* may accompt in Parliament the expence of the monies, and be punished for his faults in the service he undertook, both which are granted.

At the next Sessions, the same year, the Commons are willed to advise upon view of Articles of Peace with the *French*, whether War, or such a Unity should be accepted: They modestly excused themselves as too weak to consult in such weighty affairs. But being charged again as they did tender the honour and right of the King, they make this answer, *Quils intendent que aucunes sermes & terres que mesme leur Leige auroit oit pur cest accord in Guien, si serront tenus dobt Roy Francois par homage & service, mais ne persont uny que leur dit Leige voirroit assenter trope legierement de temer dicens Francois pertiel service la ville de Callis & aultres terres conquises des franchoise per lespreneve verroit la comen ense faest fait, si autrement lour perroit bien faier*, giving their opinions rather for Peace than War;² Peace with *France* not succeeding the eight year, the body of the State was willed to advise, whether the King in his own person, or by sending of

¹ Par. 7 Rich. 2.

² Parl. 7. Sess. 2.

forces against the *French, Spain, Flanders, and Scotland*, should proceed.¹

This King having assembled at *Oxon*, his great Council to advise whether he should pass the Seas or no, with an Army Royal, and they not daring to assent without greater Counsel.²

A Parliament the tenth year to have the advice of the Commons, as well as of the Lords, was called, and how the Realm should be governed in their Sovereign's absence.³

The truce with *France* was now expired, the Parliament was called in the 13th. to advise upon what conditions it should be renewed, or otherwise how the charge of the War should be sustained ; ⁴ at this assembly, and by consent of all, the Duke of *Lancaster* is created Duke of *Aquitaine*, the Statute of provisions now past, the Commons a party in the Letter to the Pope.⁵

The year succeeding, a Parliament is called, for the King would have advice with the Lords and Commons for the War with *Scotland*, and would not without their Counsels conclude a final peace with *France*. The like assembly for the same causes was the year ensuing, the Commons interesting the King to use a moderation in the Law of provisions, to please at this time their holy Father, so that the Statutes upon their dislike may again be executed ; and that to negotiate the peace with

¹ Par. 8. Rich. 2.

² Claus. 9. Rich 2.

³ Par. 10. Rich. 2.

⁴ Parl. 13. Rich. 2.

⁵ Rot. Claus. 13. Ric. 2

France, the Duke of *Aquitaine* may rather than another be employed.¹

To consult of the Treaty with *France* for Peace, the King in the seventeenth calleth a Parliament (the answer of the Lords is left unentred in the Roll) the Commons, upon their faith and allegiance charged, advised that with good moderation homage may be made, for *Guien* an appenage of the French *Crown*, so it trench not to involve the other pieces of the English Conquest, their answer is large, modest and worthy to be marked.²

Now succeedeth a man that first studied a popular party, as needing all to support his titles.

He in the fifth year calleth a Parliament to repress the malice of the Duke of *Orleance*, and to advise of the Wars in *Ireland* and *Scotland* (neither Counsels or supplies are entred in the Roll) and to resist an invasion intended by *France* and *Brittain* he assembleth the State again; the like was the second year following for *France*.³

In this the Commons confer, for guard of the Sea, and make many Ordinances, to which the King assenteth, the peace with the Merchants of *Bruce* and *Foins* is debated, & a Proclamation published, as they resolved;⁴ by the Speaker the Commons complain of 96 pieces of importance lost in *Guien* the year before, need of the defence of the borders, and Sea coasts, to suppress the Re-

¹ Par. 14. Ric. 2.

² Parl. 17. Ri. 2.

³ Parl. 5. Hen. 4. Parl. 6. Hen. 4. Parl. 7, & 8. Hen. 4. in 19. & 20.

⁴ Claus. 7. H. 4.

bellion in *Wales*, and disloyalty of the Earl of *Northumberland*,¹ they humbly desire that the Prince may be dispatched into those parts with speed,² and that the Castle of *Manlion*, the key of the three Realms might be left to the care of the English, and not to *Charls* of *Navarre* a stranger, and to have a vigilant eye on the Scottish Prisoners.³

In the tenth the Parliament is commanded to give their advice about the Truce with *Scotland*, and preparation against the malice of the *French*.

His Son, the wise and happy undertaker, advised with the Parliament in the first year, how to cherish his Allies and restrain his Enemies;⁴ for this there was a secret Committee of the Commons appointed to conferr with the Lords, the matter being entred into a schedule touching *Ireland*, *Wales*, *Scotland*, *Callis*, *Guien*, Shipping, Guard of the Sea, and War, provision to repulse the Enemies.⁵

In the second he openeth to the Parliament his Title to *France*, a quarrel he would prosecute to death, if they allowed and aided, death is in his Assembly enacted to all that break the Truce, or the Kings safe conduct.⁶

The year following, peace being offered by the *French* King, and the King of the *Romans* arrived to effect the work, the King refuseth any conclusion until he had thereunto advice and assent of the

¹ In 33.

² In 57.

³ In 59.

⁴ Parl. 1. Hen. 5. In 2.

⁵ In 4.

⁶ Parl. 3. Hen. 5.

Lords and Commons, for which occasion the Chancellor declareth that Assembly.¹

In the fourth and fifth, no Peace being concluded with *France*, he calleth the State together to consult about the War, concluding a Treaty of amity with *Sigismund*, King of the *Romans*, by allowance of the three Estates, and entred Articles into the Journal Rols.²

The same year, by the Duke of *Bedford*, in the Kings absence, a Parliament was called to the former purposes, as appeareth by the Summons, though in the Roll omitted.³ The like in the seventh.⁴

The Treaty with *France* is by the Prelates, Nobles, and Commons of the Kingdom perused and ratified in the 11th. of his Reign.

His Son more holy than happy, succeeded ; adviseth him the second year with the Lords and Commons, for the well keeping the Peace with *France* ; consulteth with them about the delivery of the Scottish King, and the conclusion of it is confirmed by common assent.⁵

And in the third year they are called to advise and consent to a new Article in the League with *Scotland*, for change of Hostages.⁶

And in the ninth, conclude certain persons by name to Treat a Peace with the Dolphin of *France*.⁷

¹ Parl. 3. Hen. 5.

² Parl. 4 & 5. Hen. 5.

³ Parl. 5 Hen. 5.

⁴ Parl. 7. Hen. 5.

⁵ Rot. Parl. 2. Hen. 6.

⁶ Rot. Pa. 3. H. 6.

⁷ Rot. Pa. 9. H. 6.

The Treaty at *Arras*, whither the Pope had sent as Mediators two Cardinals not succeeding.

The King in Parliament, *Anno* 14. sheweth he must either lose his Title, Stile, and Kingdom of *France*, or else defend it by force ; the best means for the prevention thereof he willeth them to advise him.¹

He summoneth again the next year the State, to consult how the Realm might be best defended, and the Sea safe kept against his Enemies.²

In the twentieth, the Commons exhibite a Bill for the Guard of the Sea, ascertain the number of Ships, assess Wages, and dispose Prizes of any fortune, to which the King accordeth ; and that the *Genouese* may be declared enemies for assisting the *Turks* in the spoyl of the *Rhode* Knights, and that the priviledges of the *Pruce* and *Hans* Towns Merchants may be suspended, till compensation be made to the English for the wrongs they have done them, to which the King in part accordeth.³

The King by the Chancellor declareth in Parliament, *Anno* 23. That the Marriage with *Margaret*, the King of *Sicils* Daughter, was contracted for inducing the Peace made with *France*, against which the Lords, as not by their advice effected, make Protestation, and enter it on the Roll.⁴

In the 25. the King intended to pass in Person into *France*, and there to treat a Peace with the King, adviseth with the Lords and Commons in

¹ Rot. Parl. 14. Hen. 6.

³ Parl. 20. H. 6.

² Rot. Parl. 15. Hen. 6.

⁴ Parl. 23. H. 6.

Parliament, and Letters of Mart are granted against the *Brittains*, for spoil done to the *English Merchants*.¹

The Lord *Hastings*, and Abbot of *Glocester*, declare in Parliament, *Anno 27.* the preparation of the *French*, the breach by them of the Peace, the weak defence of *Normandy*, and the expiration shortly of the Truce, requiring speedy advice and remedy.²

In the 29. it was enjoined by Parliament, to provide for defence of the Sea and Land against the *French*.³

It was commanded by the King to the States assembled, *Anno 33.* to advise for well ordering of his House, payment of the Soldiers at *Callis*, guard of the Sea, raising of the Siege at *Barwick*, made by the *Scots* against the Truce, dispoiling of the number of 13000 Soldiers, arrayed the last Parliament, according of differences amongst the Lords, restraining transportation of Gold and Silver, and acquitting the disorders in *Wales*; of all which, Committees are appointed to frame Bills.⁴

Edward the Fourth, by the Chancellor, declareth in his seventh year to the Lords and Commons, that having made peace with *Scotland*, entred League with *Spain* and *Denmark*, contracted with *Burgundy* and *Britany* for their ayd in the recovery of his right in *France*, he had now called

¹ Rot. Parl. 25. Hen. 6. in 3.

³ Parl. 29. H. 6.

² Parl. 27. H. 6.

⁴ Parl. 33. H. 6.

them to give their Counsels in proceeding, which Charge in a second Sessions was again proposed unto them.¹

The like was to another Parliament in his twelfth year.²

After this time their Journals of Parliament have not been well preserved, or not carefully entred; for I can find of this nature no Record, until the first of *Hen. 7.* wherein the Commons, by *Thomas Lovel* their Speaker, Petition the King to take to Wife *Elizabeth*, Daughter to *Edw. 4.* to which the King at their request agreeth.³

The next is the third of *Hen. 8.* in which from the King, the Chancellor declareth to the three Estates the cause of that Assembly: The first to devise a course to resist the Invasion of the *Scots*, next how to acquit the quarrel between the King of *Castile*, and the Duke of *Geldres* his Allie; lastly, for assisting the Pope against *Lewis* King of *France*, whose Bull expressing the injuries done the Sea Apostolick, was read by the Master of the Rolls in open Parliament, The Chancellor, the Treasurer, and other Lords sent down to the Commons to confer with them.⁴

The last in the 32d. of the same year, where the Chancellor remembring the many troubles the State had undergone, in doubtful titles of Succession, declareth, that although the Convocation had judged void the marriage of *Anne of Cleve*,

¹ Parl. 7. E. 4.

² Parl. 12, E. 4.

³ Rot. Parl. 1 Hen. 7.

⁴ Parl. 3. H. 8.

yet the King would not proceed without the Counsel of the three Estates: The two Archbishops are sent to the Commons with the Sentence sealed, which read, and there discussed, they pass a Bill against the Marriage.¹

In all these passages of publick Counsels, wherein I have been much assisted by the painful labour of Mr. *Elsing*, Clerk of the Parliament, and still observe that the Sovereign Lord, either in best advice, or in most necessities, would entertain the Commons with the weightiest causes, either forraign or domestique, to apt and bind them so to readiness of charge, and they as warily avoiding it to eschew expense; their modest answers may be a rule for ignorant liberty to form their duties, and humbly to entertain such weighty Counsels at their Sovereigns pleasure, and not to the wild fancy of any factious spirit. I will add one forraign example to shew what use hath been formerly made by pretending Marriages, & of Parliaments to dissolve them, their first end served.

Maximilian the Emperour, and *Ferdinand* of *Spain*, the one to secure his possessions in *Italy*, the other to gain the Kingdom of *Navarre*, (to both which the *French* King stood in the way) projected a Marriage of *Charls* their Grand-child, with *Mary* the King of *Englands* Sister, it was embraced, and a Book published of the benefits likely to ensue the Christian world by this match.²

¹ Rot. Parl. 32. Hen. 8. ² Tractat. matrimonial. 1510.

Upon this ground, *Ferdinando* beginneth to incite *Henry* the 8th. to War with *France*, presents him with succours, and designs him *Guien* to be the mark ; and *Dorset* is sent with men and munition to joyn with the *Spanish* Forces then on the Borders of *Navarre* : the noise is, they came to assist *Ferdinand* in the Conquest of that Kingdom, which though false, gained such reputation, that *Albret* was disheartned, and *Ferdinand* possessed himself of that his Successors since retained ; his end served, the English Army weak and weather-beaten, are returned fruitless.¹

Maximilian then allureth the young and active King to begin with *France* on the other side ; *Terouen* and *Tournay* is now the object, whither *Henry* goeth with Victory, but better advised (with that pittance) makes an end by peace with *France*, whose aim and heart was set on *Millain*.²

A new bait the old Emperour findeth out to catch the Ambitious young man, he would needs resign unto him the Empire, too heavy for his age to bear : The Cardinal *Sedunensis* is sent over to sign the Agreement, which he did, and *France* must now again be made an Enemy. To prevent this danger *Francis* released his Title to *Naples*, and offereth *Laogitia* his Daughter to *Maximilians* Grandchild *Charls*, at *Noyon* : this is acted in the dark, and at *Arno* the *French* Commissioners came up the back stairs with 60000 Florins, and

¹ Ex literis orig. legator.

² Ex tract. Hen. 8. & Maximilian. 1511.

they engrossed Covenants, when the abused King of *Englands* Ambassador *Pace*, went down the other;¹ the good Cardinal returneth home, meeteth by the way this foul play of his Master,² and writ to the King of *England*, not in excuse, but in complaint, *Contra perfidiam Principum*, an honest Letter. *Ferdinand* and *Maximilian* dead, *Francis* and *Charls* are Competitors for the Empire.³ *Henry* the 8th. is courted for his help by both; the one with the tye of Alliance (for the Infant *Dolphin* had affyed *Henry* the 8ths Daughter) the other with the like, and Daughter, he will make his Daughter a Queen *in præsente*, which the *Dolphin* cannot do, and by his favour an Empress.⁴

To further *France* was but to win Ambition to prey upon all his Neighbours, the English King is won, and winneth for *Spain* the Imperial wreath,⁵ which *Charls* in two Letters I have of his own hand then thankfully confessed.⁶

From *Aquisgrane* he cometh Crowned in hast to *England*, Wedded at *Windsor* the King's Daughter, contracteth to joyn in an Invasion of *France*, to divide it with his Father in Law, by the River of *Rodon*, and sweareth at the Altar in *Pauls* to keep faith in all.

Bourbon is wrought from *France*, and entreth *Provence* with an Army, paid with King *Henries*

¹ Ex tract. orig.

² Ex. litteris Ric. Pace Legat. Reg. Angliæ.

³ Ex literis Car. Sedunensis.

⁴ Ex literis Carol. Reg. Hisp.

⁵ Ex literis Car. Imperat. original.

⁶ Extract. Wind. 1522. Ex instru. orig. jurament.

money ; *Suffolk* passed with the English Forces by *Picardy* :¹ But *Charles* the Emperour, who should have entred *Guyen* faileth, drawing away *Burbon* from a streight Siege of *Marseilles*, to interrupt *Francis* then entered *Italy*, and so the enterprize of *France* is defeated, the French King is at *Pavie*, taken Prisoner by *Pescaro*, led to *Gron*, hurried into *Spain* by the Emperours Galleys, and forced at *Madrid* to a hard bargain, without privity of *Henry* the 8th. or provision of him, who had been at the greater charge of that War, Now the Emperour affecteth that Monarchy that hath ever since (as some say) infected the *Austrian* Family.²

Rome, the fatal old Seat of Government, must be the Seat of his Empire : *Burbon*, and after *Moncado* are directed to surprize it.³ *Angelo*, the observant Fryer, is sent before the Pope, consigned by the Emperours Election, who meant (as his own instructions warrant) to restore that right again to the Imperial Throne.⁴

Charls will follow him from *Barcellona* with an Army ; but before, he must call a Parliament at *Toledo*, whether by election or affection, I dare not divine ;⁵ that Assembly maketh Protestation against their Masters Marriage with *England*, and assign him *Isabella* of *Portugal* for a Wife ; the

¹ Ex literis Richardi Pace, & Johannis Russel.

² Ex tract. Madrislensi 526. Ex Rot. Com. Russel & Pace.

³ Ex instru. orig. Carol. 5.

⁴ Ex instru. H. 8. Bryano & Gardinen.

⁵ Ex literis Cuthb. Tunstall. Epis. Lond. Legat. Hen. 8. in Hispan.

Instruments are sent signed by the Imperial Notary to *Henry* the 8th.¹ And *Charls* bemoaneth the streight he is forced into by them ;² but before all this he had wrought from *Rome*, a Dispensation for his former out-hand Marriage ;³ sending not long after *Gonzado Ferdinando* his Chaplain, to invite the Earl of *Desmon* to rebel in *Ireland*.⁴

And to invite *James* the First, by promise of a Marriage to *Christian* of *Denmarks* Daughter, his Necce ; to enter the *English* Borders, to busie the *English* King, for asking a strict accompt of that Indignity.⁵ *Henry* the 8th. with Providence and good success over-wrought these dangers, and by the League of *Italy* he forced him to moderate Conditions at the Treaty of *Cambray*, 1529. He being made *Caput fœderis* against the Emperour.⁶

I may end your Honours trouble with this one Example, and with humble prayers, That the Catholique may have so much of Princely sincerity, as not to intend the like, or my good gracious Master a jealous vigilancy to prevent it, if it should, &c.

¹ Ex protestat. orig. Toledonensi Parl.

² Ex literis Car. Wolsey & Greg. Lusathis.

³ Ex instru. Signat. Ch. Im. Gonzado Ferdinand. Capel. suo dat. 24. Feb.

⁴ Ex lib. N. N. N. Dom Car.

⁵ Ex literis intercept. â Com. Northumb. Custod. March. Scotiæ.

⁶ Ex tract. orig. in Arch:West. Ex tract. Cambrens. 1529.

THAT THE
SOVERAIGNS
PERSON
is Required in the Great
COUNCILS,
OR
ASSEMBLIES
OF THE
STATE,

As well at the Consultations
as at the Conclusions.

Written by Sir *Robert Cotton*, Knight
and Baronet.

LONDON,
Printed in the Year, 1679.





THAT THE
SOVERAIGNS
PERSON
is Required in the Great
COUNCILS,
OR
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OF THE
STATE, &c.

SINCE of these Assemblies few Diaries, or exact Journal Books are remaining, and those but of late, and negligently entred, the Acts and Ordinances only reported to Posterity are the Rolls, this question though clear in general reason, and conveniency, must be wrought for the particular, out of such incident proofs, as the Monument of Story and Records by pieces leave us. And to deduce it the clearer down, some essential circumstances of name, time, place,

occasion, and persons, must be in a general shortly touched, before the force of particular proofs be laid down. This noble body of the State, now called the Houses in Parliament, is known in several Ages, by several names, *Concilia* the Councils in the old times, after *Magnum Commune*, and *Generale Concilium*, *Curia Magna capitalis*. and *Curia Regis*;¹ sometimes *Generale Placitum*, and sometimes *Synodi* and *Synodalia decreta*, although aswell the causes of the Commonwealth as Church were there decided. The name of Parliament, except in the Abbots Chapters, not ever heard of until the Reign of King *John*, and then but rarely. At the Kings Court were these Conventions usually, and the Presence, Privy-Chamber, or other room convenient, for the King in former times as now, then used;² for what is the present House of Lords, but so, as at this time and was before the firing, the Palace at *Westminster*, about the seventeenth of *Henry* the eighth who then and there resided.

Improbable it is to believe the King was excluded his own Privy Chamber, and unmannerly for guests to barr him the company, who gave to them their entertainment. It was at first as now *Edicto Principis*, at the Kings pleasure.³ Towards the end of the *Saxons*, and in the first time of the *Norman* Kings, it stood in *Custom-Grace*, to

¹ Ex Consiliis Reg. Saxon. Cantuar. Glanvil. lib. Ely.

² Leges Ethelredi. Ingulphus. Croylandensis. Registra Monaster.

³ Regist. Eliensis.

Easter, Whitsontide, and Christmas fixed.¹ The Bishops, Earls, and Lords, *Ex more*, then assembled (so are the frequent words in all the Annals) the King of course then revested with his imperial Crown by the Bishops and Peers assembling, in recognition of their pre-obliged faith and present service,² until the unsafe time of King *John*, by over-potent and popular Lords, gave discontinuance to this constant grace of Kings, and then it returned to the uncertain pleasure of the Sovereigns summons.³ The causes then as now of such Assemblies, were provisions for the support of the State in Men and Money; well ordering of the Church and Commonwealth, and determining of such causes, with ordinary Courts *nesciebant judicare* (as *Glanvill* the grand Judge under *Henry* the second saith) where the presence of the King was still required, it being otherwise absurd to make the King assentor to the Judgments of Parliament, and afford him no part in the consultation.⁴ The necessity thereof is well and fully deduced unto us in a reverent monument not far from that grave mans time, in these words, *Rex tenetur omni modo personaliter interesse Parlamento, nisi per Corporalem ægritudinem detineatur.*⁵ Then to acquaint the Parliament, of such occasion of either House, *Causa est quod solebat Clamor & Murmur esse pro absentia Regis quia res damnosa &*

¹ Annales Monasteriorum. Liber de bello.

² Regist. de Wig.

³ Johannes Eversden. Matthew Paris. Hoveden.

⁴ Bracton. Glanvill. Fleta.

⁵ Modus tenendi Parliament.

periculosa est toto Communitati Parliamento & Regni, cum Rex a Parlamento absens fuerit, Nec se absentare debet, nec potest nisi duntaxat in Causa supradicta. By this appeareth the desire of the State to have the Kings presence in these great Councils by express necessity. I will now endeavour to lead the practice of it from the dark and eldest times to these no less neglected of ours.

From the year 720. to neer 900. during all the *Heptarchy* in all the Councils remaining composed *Ex Episcopis, Abbatibus, Ducibus, satrapis, & omni dignitate optimatibus, Ecclesiasticis scilicet & secularibus personis pro utilitate Ecclesiæ, & stabilitate Regni pertractand.* Seven of them are *Rege præcedente* and but one by deputy; and incongruous it were and almost non-sence, to bar his presence that is president of such an assembly.¹

The *Saxon Monarchy* under *Alfred, Ethelred,* and *Edgar* in their Synods or *Placita generalia* went in the same practice and since. Thus *Ethelwald* appealed against Earl *Leofrick*; From the County and *generale Placitum* before King *Ethelred* and *Edgira* the Queen, against Earl *Goda* to *Eldred* the King at *London, Congregatis Principibus & sapientibus Angliæ.*² In the year 1502. under *Edward* the Confessor, *Statutum est placitum magnum extra Londinum quod Normanni*

¹ Ex Registris Concil. Cantuariæ. Ex Consilio Witherdi Regist.

² Ex Synodis & legibus Alfredi, Ethelredi, Edgari. Ex Registr. Elien. Ex Registr. Abingtonensi. Chronicon de Waverly.

*ex Francorum consuetud.*¹ *Parliamentum appellant*, where the King and all his Barons appealed *Goodwin* for his brother *Alureds* death, the Earl denyed it, and the King replyed thus, My Lords, you that are my liege men, Earls and Barons of the Land here Assembled together, have heard my Appeal and his Answer, unto you be it left to do right betwixt us.²

At the great Council at *Westminster* 1072. in *Easter* week, the cause of the two Archbishops *Lanfrank* and *Thomas*, *ventilata fuit, in præsentia Regis Willielm.* And after at *Windsor*, *finem accepit in præsentia Regis.*³ At the same feast in the year 1082. (the usual time of such Assemblies) the King, the Archbishops, Bishops, Abbots, Earls, the chief Nobility of the Kingdom present (for so are the words of the Records) the cause between *Arsast* Bishop of *Norway*, and *Baldwine* Abbot of *Bury* was also argued, *Et ventilata in publica jubet Rex teneri Judicium Causis auditis Amiborum.*⁴

The diligence of his Son, the Learned *Henry* the first, in executing of this part of his Kingly function is commended to Posterity, by *Walter Mape*, a Learned man, trained up, and in favour with *Henry* the second, in these words, *Omnia Regali more moderamine faciebat, neminem volebat agere justitia vel pace. Constituerat autem ad*

¹ *Gesta Sancti Edwardi Gallice.*

² *Alured. Rivalensis, vita Edwardi Confessoris.*

³ *Regist. Cantuarien.*

⁴ *Regist. Sancti Edmundi.*

*tranquillitatem omnium ut diebus vacationis, vel in domo magna subsidio copiam sui faceret, usque ad horam sextam, (which was till twelve as we now account) secum habens Comites, Baronet, Proceres, & Vavasores, to hear and determine causes, whereby he attained the surname of Leo Justitiæ in all stories, and so out-went in quiet guidance of the State his best progenitors.*¹ The next of his name that succeeded is remembered every where for his debates and his disputes he had in person with *Thomas* the Archbishop, and others of his part, at the great Councils both at *London, Clarendon, and Northampton*, for redress of the many complaints of the Commons, against the outrages and extortions of the Clergy;² one thousand five hundred and fifty seven, *Die Pentecostis apud sanctum Edmundum*, the same King *Diademate Insignitus*, with the Bishops, Abbots, Earls, and Barons of the Kingdom, sate daily himself and heard all the debates, concerning the Liberties and Charters of *Battle Abbey*. The interlocutory Speeches as well of the King, as Lords and parties are at full related in a Register of that Church.³

The sute between the Church of *Lincoln* and *Saint Albanes*, in *Præsentia Regis Henry, Archiepiscop. & Episcop. omnium Angliæ, & Comitum*

¹ *Walterus Mape de nugis curialium.* Hen. Huntingdon. *Malsbury.*

² *Vita Tho. Cantuar. per Fitz-Stephanum.* *Gesta Hen.*
2. *Benedictio Abb. Authore.*

³ *Regist. Monast. de Bello.*

& *Baronum Regni*, was at *Westminster* debated and ended.¹ And had a love of memory and truth been a protector of the publick Records of the State, as awe of the Clergies censure was a guard to theirs, in tempestuous times, we had not been now left to the only friendship of Monks diligence; for example in this kind. At *Lincoln* the Archbishops, some Bishops, but all the Earls and Barons of the Realm, *una cum Rege Johanne congregati ad colloquium de concordia Regis Scotiæ*, saith the Register of that Church.²

This use under King *Henry* the third, needeth no further proof, than the Writ of summons (then framed) expressing that Kings mind and practice; It is *Nobiscum & Prælati & Magnatibus nostris quos vocari fecimus super præmissis tractare & Consilium impendere*, which word *Nobiscum* implieth plainly the Kings presence; what the succeeding practice was, from the fifteenth year of the second *Edward*, the proper Records of this inquiry (the Journal Books being lost) I am enforced to draw from out the Rolls of Acts, wherein sometimes by chance they are remembered.³ *Edward* the second was present in Parliament in the fifteenth year of his Reign at the complaint against the *Spencers*, and at the second Parliament that year, for the repeal of that banishment.⁴

¹ Regist. Lincoln.

² Liber Burtoniens. Monasterii.

³ Rot. Claus. Anno 59. H. 3.

⁴ Rot. Parl. 15. Edw. 2.

In the fourth of *Edward* the third, the King was present at the accusation of *Roger Mortimer*, but not at the Tryal.¹

And the next year in the treaty of the French affairs.²

In the sixth year *Intererat Rex in Causa Johannis de Gray & Willielmi de Zous*. The same year the second day in Parliament, the King was present at the debate about his Voyage into *Scotland*.

In the fifteenth year the King in the Painted Chamber sitting with the Lords in consultation, the Archbishop after pardon prayed, that for better clearing himself, he might be tryed in full Parliament by his Peers ; which was granted.³

In the seventeenth in *Camera Alba*, now the Court of requests, *Rex cum magnatibus conveniunt Communes super negotiis Regni*.⁴

In the tenth of *Richard* the second, the King departed from the Parliament in some discontent, when after some time, Lords are sent to pray his presence, and inform his Majesty that if he forbear his presence amongst them forty days, that then *Ex antiquo Statuto*, they may return *absque domigereo Regis*, to their several homes.⁵

Henry the fourth began his first Parliament the first of *November*, and was the twenty seventh of

¹ Rot. Parl. 4. Edw. 3.

² Rot. Parl. Anno. 5. Edw. 3.

³ Rot. Parl. Anno 15. Edw. 3.

⁴ Rot. Parl. Anno 17. Edw. 3.

⁵ Chronicon Henrici Knighton.

the same month at a debate about the Duke of *Brittany*, the thirtieth day the Cause of the Archbishop of *Canterbury* was before him proposed only.¹

The third of *November* he was at the debate, whether the Commons had right of Judicature, yea or no.²

On the tenth he was with the Lords in their consulation about the expedition against the *Scots*, the creation of the Duke of *Lancaster*, and prohibition of a new sect for entring his Kingdom. Some Ordinances were at this time consulted of before him about the staple, and the sentence against *Haxey* after dispute revoked.³

This King began his second Parliament, the twentieth of *January*, and on the ninth of *February* was present to make agreement betwixt the Bishop of *Norwich*, and *Thomas* of *Erpingham*.⁴

On the twentieth day of the same month he was present at Council for repressing the *Welsh* Rebels; for revocation of stipends, and concerning the Priors Aliens.

On the 26. they advise before the King of the *Cistertians* order.

On the second of *March* of the Statute of Provisions, the Keeper of the privy Seal, of relieving the two Universities.

And on the ninth of *March*, they mediate before

¹ Rot. Parl. Anno 1. Hen. 4.

² Rot. Parl. Anno. 2 Hen. 4.

³ Rot. Parl. 10. Hen. 4.

⁴ Anno. 2 Hen. 4. Rot. Parl.

the King a reconciliation betwixt the Earl of *Rutland* and the Lord *Fitzwater*.¹

He also began a Parliament in the fifth year upon the fifteenth of *January*, and on the twentieth they advise before the King of guarding the Seas, and the *Welsh* Rebellion.²

On the eighth of *February* the Earl of *Northumberland* is charged before the King, and in his presence, and by his permission, divers, of whom he knew no harm, were removed from the Court.

The next day at the Petition of the Commons, he took upon him to reconcile the Earls of *Northumberland* and *Westmerland*. And on the two and twentieth of *February* of the Earls of *Northumberland* and *Dunbarre*.

In a Parliament of 27 of *Hen.* the 6. a Challenge of seat in Parliament betwixt the Earls of *Arundel* and *Devonshire*, was examined and appointed by the KING with the advice of the Lords.³

In that great Capital cause of the Duke of *Suffolk*, the 28 of *Hen.* 6. I find not the King once present at the debates, but the Duke appealing from his tryal by Peerage, to the King, is brought from out of the House of Lords to a private Chamber, where the King after the Chancellor in gross had declared his offence, and his refusal, the King himself (but not in place of judgment) adjudged his banishment.⁴

¹ Rot. Parl. Anno 4 Hen. 4.

² Rot. Parl. Anno 5 Hen. 4.

³ Rot. Parl. Anno 27 Hen. 6.

⁴ Rot. Parl. Anno 28 Hen. 6.

By the Rolls of *Edward* the fourth, it appeareth that he was many days, besides the first and last, in Parliament, and there was entred some Speeches by him uttered, but that of all the rest is most of remark, the reporter then present thus tells it.¹ This of the Duke of *Clarence* and the King, *Tristis disceptatio inter duos tantæ humanitatis Germanos, nemo arguit contra ducem nisi Rex, nemo respondit Regi nisi dux*; some other testimonies are brought in, with which the Lords are satisfied, and so *formârunt in eum sententiam damnationis*, by the mouth of the Duke of *Buckingham*, the Steward of *England*, all which was much distasted by the House of Commons.²

The reign of *Henry* the seventh affords us upon the Rolls to one example. The Journal Books are lost, except so much as preserves the passages of eight days in the twelfth year of his Reign; in which the King was some days present at all debates, and with his own hand the one and thirtieth day of the Parliament, delivered in a Bill of Trade then read,³ but had the memorials remained, it is no doubt but he would have been as frequent in his Great Council of Parliament, as he was in the *Starr-Chamber*, where by the Register of that Court it appeareth as well in debate of private causes, that touch neither life nor Member, as those of publick care, he every year of all his reign was often present.⁴

¹ Rot. Parl. Anno. Edw. 4. ² Registrum Crolanden.

³ Ex Chartis Anno. 12 H. 7.

⁴ Ex Regist. Camera Stellata.

Of *Henry* the eighth, memory hath not been curious, but if he were not often present, peradventure, that may be the cause, which the learned Recorder *Fleetwood*, in his preface to the Annals of *Edward* the fifth, *Richard* the third, *Henry* the seventh, and *Henry* the eighth hath observed in the Statutes made in that Kings days, for which cause he hath severed their Index from the former : And much lay in the will of *Wolsey*, who ever was unwilling to let that King see with his own eyes.¹

Edward the sixth, in respect of his young years may be well excused, but that such was his purpose it appears by a memorial of his own hand, who proportioning the affairs of Council to several persons, reserved those of greatest weight to his own presence in these words. *These to attend the matters of State that I will sit with them once a week to hear the debating of things of most importance.*²

Unfitness, by sex, in his two succeeding Sisters, to be so frequently present as their former Ancestors, led in the ill occasion of such opinion and practice.

Most excellent Majesty, your most humble servant in discharge of obedience and zeal, hath hastned up this abstract, which in all humility he offers up unto your gracious pardon. Presumption to enter the Closet of your Council is far from his

¹ Ex Annalibus Fleetwood Recordat. London.

² Memorial. Ed. 6. propria manu.

modesty and duty ; what hath been your powerful Command, he hath made his Work, what is fit to be done with it, is only your divine judgment. He dares not say Presidents are warrants to direct ; The success (is as worthy observation) as the knowledg of them, some times have made ill example by extension of Regal power, through ill Counsels with ill success. Some as bad or worse when the people have had too much of that, and the King too little, the danger no less. To cut out of either of these patterns to follow, were but to be in Love with the mischief, for the example. The clearer I present this to your Highness, the nearer I approach the uprightness of your heart, the blessed fortune of your happy Subjects: Pardon, most Sacred Majesty, that I offer up unto your admired wisdom, my weak, but dutiful observations out of all the former gathering. In Consulations of State and decisions of private complaints, it is clear from all times, the King was not only present to advise and hear but to determine also; in Cases Criminal, and not of Blood, to bar the King a part were to exclude him the *Star-Chamber*, as far from reason as example. The doubt is then alone in Crimes meer Capital ; I dare not commend too much the times that lost these patterns, either for the Causes or Effects ; but wish the one and other never more. To proceed by public Act of Commons, Peers, and King, was most usual. Appeals are given by Law of *Hen. 4.* of this now in debate, the way I fear, as yet obscure, as great advice to State is

needful for the manner, as for the Justice. The example in the cause of the Duke of *Suffolk*, 28 *Hen*, 6. where the king gave judgment was protested against by the Lords. That of the Duke of *Clarence* of *Edw.* 4. where the Lords and the high Steward the Duke of *Buckingham* gave judgment, was protested against by the Commons; in both of these the King was sometimes present, but which of those may suit these times I dare not guess.

That of *Primo Rich.* 2. of *Gomeney*s and *Weston*, accused by the Commons plaint for Treason, was tried by the Lords in absence of the King, but sentenced by the Lord *Scroop*, Steward for the King. The accused were of the rank of the Accusers, Commons and not Lords: How this will make a President to judg in causes Capital, a Peer of Parliament, I cannot tell. But if I should conceive a way answerable as well to Parliament as other Courts, if the King and the Lords were Tryers, and the Commons assenters to the judgment to hear together the Charge, and Evidence; The Lords as doth the Jury in other Courts, to withdraw, to find the Verdict, and then the Steward, for the King, to pronounce the Sentence. It passeth so by way of Act and Course that carrieth with it no exception, and likely to avoid all curious questions of your Highness presence there.

If your humble servant hath in this expression of his desire to do you service, presumed too far, his Comfort is, that where zeal of duty hath made the fault, benignity of goodness will grant the Pardon.

A
DISCOURSE
OF THE
LAWFULNESS
OF
COMBATS

To be performed in the presence
OF THE
KING,
OR THE
Constable and Marshal
OF
ENGLAND.

Written by Sir *ROBERT COTTON*,
Knight and Baronet. 1609.

LONDON: Printed in the Year, 1679.





A
DISCOURSE
OF THE
LAWFULNESS
OF
COMBATS.

To be performed in the presence of the KING, &c.

COMBAT.



Here differences could not be determined by legal proof or testimony, there was allowed the party his purgation ;

Which was either { *Canonical*
or
*Legal.*¹

The first by Oath, and called *Canonical*, because it is Lawful.

The other, which was either *Per aquam candentem, ferrum ignitum*, or *Duellum*, called

¹ Ex lib. 3. Const. car. magni de testibus. Bract. l. 3. c. 18. fol. 137. tit. Corona.

vulgare, because it was brought in by the barbarous people, without the pretext of any Law; until the *Gothish* and *Lombard* Kings, seeing their Subjects more addicted to Martial Discipline than to Civil Government, reduced those trials to Form and Rule: Which Constitutions are now incorporated in the Civil Law.¹

From the Northern Nations (of which the *Saxons* and *Normans*, or *Northmanni* are part) it was brought into this Land; and although it grew long ago, both by the decrees of *Desiderius*, *Luitprandus*, and the Mother Church, discontinued amongst the *Lombards* as soon as they grew Civilized in *Italy*; yet it continued till of late with us, as a mark of our longer Barbarism: Neither would we in this obey the See of *Rome*, to which we were in many respects observant Children; which, for that in the Duel, *Condemnandus sæpe absolvitur, & quia Deus tentatur*, decreed so often and streightly against it.²

In *England* this single Combat was either granted the party by licence extrajudicial, or legal process. The first was ever from the King as a chief flower of his Imperial Crown, and it was for exercise of Arms especially.

Thus did *Richard* I. give leave for Tournaments in five places in *England*; *inter Sarum & Winton*; *inter Stamford & Wallingford*, &c. *it a quod pax*

¹ *Leges Lombard.* fol. 17. b. *Luitprando Rege.* Propter consuetudinem gent. legem impiam vitare non possumus.

² *De Papin. Hist.* l. 9. c. 11. *Lib. 5. Decret.* 2. part. ca. 1. qu. 40.

terræ nostra non infringetur, nec potestas justiciaria minorabitur: For performance whereof, as likewise to pay unto the King according to their qualities or degrees, a sum of money proportionable, and that of a good value and advantage to the Crown, they take a solemn Oath.¹

The like I find in 20 E. 1. and 18 E. 3. granted *Viris militaribus Comitatus Lincoln*, to hold a Just there every year.² *Richard Redman*, and his three Companions in Arms, had the licence of *Rich. 2. Hastiludere cum Willielmo Halberton, cum tribus sociis suis apud Civitat. Carlhol.*³ The like did *H. 4* to *John de Gray*; and of this sort I find in records, examples plentiful.⁴

Yet did Pope *Alexand.* the fourth, following also the steps of his Predecessors, *Innocentius & Eugenius*, prohibit throughout all Christendom, *Detestabiles nundinas vel ferias quas vulgo Torniamenta vocant, in quibus Milites convenire solent ad ostentationem virium suarum & audaciæ, unde mortes hominum & pericula animarum sæpe conveniunt.* And therefore did *Gregory* the tenth send to *Edward* the first his Bull *pro subtrahenda Regis præsentia à Torniamentis à partibus Franciæ*, as from a spectacle altogether in a Christian Prince unlawful: For, *Gladiatorum sceleribus non minus cruore profundit qui spectat, quàm ille qui facit*, saith *Lactantius.*⁵ And *Quid inhumanius, quid*

¹ Rich. 1. Parl. Anno 20.

² 20 E. 1. Pat. 18. E. 3. in 44. part. 2. Pat. part. 2. Anno 19. R. 2. m. 16.

⁴ Pat. Anno 5. H. 4. m. 8.

Lactan. divin. Instit. cap. 6.

*acerbius dici potest, saith St. Cyprian, then when homo occiditur in voluptatem hominis, & ut quis possit occidere peritia est, usus est, ars est. Scelus non tantum geritur, sed docetur. Disciplini est ut perimere quis possit, & Gloria quoddam perimunt.*¹

And therefore great *Constantine*, as a fruit of his conversion (which *Honorius* his Christian successor did confirm) established this edict: *Cruenta spectacula in otio civili & domesticâ quiete non placent: quapropter omnino Gladiatores esse prohibemus.*² And the permission here amongst us no doubt, is not the least encouragement from foolish confidence of skill, of so many private quarrels undertaken.

Combats permitted by Law, are either in causes Criminal or Civil, as in appeals of Treason, and then out of the Court of the Constable and Marshal; as that between *Essex* and *Montford*, in the reign of *Henry* the first, for forsaking the Kings Standard.³

That between *Audley* and *Chatterton* for betraying the fort of Saint *Saviours* in *Constant*, the eighth year of *Richard* the second.

And that of *Bartram de Usano*, and *John Bulmer*, *coram Constabulario & Mariscallo Angliæ de verbis proditoris, Anno 9, H. 4.*⁴ The form

St. Cyp. l. 1. Ep. 2.

² Euseb. in vita. Constant. l. 3. Sozomen. l. 1. c. 8. l. 2. Col. & Glad. Ex Cod. Theodos. l. 5. c. 26.

³ Focelinus de Brackland cap. 12. H. 1.

⁴ Part. pat. 8. R. 2. Memb. 8. Rot. Vascon. Anno 9 H. 4.

hereof appeareth in the Plea Rolls, *Anno 22. E. 1.* in the case of *Vessey*: And in the Book of the Marshals Office, in the Chapter *Modus facienda Duellum coram Rege*.¹

In Appeals of Murther or Robbery, the Combat is granted out of the Court of the Kings Bench. The Presidents are often in the books of Law; and the form may be gathered out of *Bracton*, and the printed Reports of *E. 3.* and *H. 4.* All being an inhibition of the *Norman* customs, as appeareth in the 68th Chapter of their Customary; from whence we seem to have brought it.²

And thus far of Combats in Cases Criminal.

In cases Civil, it is granted either for Title of Arms out of the Marshals Court; as between *Richard Scroop* and *Sir Robert Grosvenor*, *Citsilt*, and others; Or for Title of Lands by a Writ of Right in the Common-Pleas, the experience whereof hath been of late; as in the Case of *Paramour*;³ and is often before found in our printed Reports, where the manner of darraigning Battail is likewise; as *1 H. 6.* and *13 Eliz.* in the *L. Dyer* expressed.⁴

To this may be added, though beyond the Cognisance of the Common Law, that which hath in it the best pretext of Combat, which is the

¹ Placita coram Rege 22. E. 1.

² Bract. l. 3. c. 21. Anno 17 E. 3. & Anno 9. H. 4. Ex Consuetud. Duc. Norman. cap. 63.

³ Tit. de Equela multri fol. 145. Breve Reg. orig. apud R. G. C.

⁴ Reports Anno 1 H. 6. Dyer Anno 13. Eliz.

saving of Christian blood, by deciding in single fight, that which would be otherwise the effect of publick War.

Such were the Offers of *R. 1. E. 3.* and *R. 2.* to try their right with the *French King* body to body.¹ And so was that between *Charles of Arragon*, and *Peter of Terracone*, for the Isle of *Sicilie*, which by allowance of Pope *Martin* the 4th. and the Colledge of Cardinals, was agreed to be fought at *Burdeaux* in *Aquitain*.² Wherein (under favour) he digressed far from the steps of his Predecessors, *Eugenius*, *Innocentius*, and *Alexander*, and was no pattern to the next of his name, who was so far from approving the Combat between the Dukes of *Burgundy* and *Glocester*, as that he did inhibit it by his Bull; declaring therein, that it was *Detestabile genus pugnae, omni divino humano jure damnatum, & fidelibus interdictum*; and he did wonder & grieve, *quod ira, ambitio, vel cupiditas honoris humani ipsos Duces immemores faceret Legis Domini & salutis aeternae, qua privatus esset quicumque in talipugna decederat: Nam saepe compertum est superatum fovere justitiam: Et quomodo existimare quisquam potest rectum judicium ex Duello, in quo inimicus Veritatis Diabolus dominatur*.³

And thus far of Combates, which by the Law of

¹ Rog. Hoveden & Adam Merimuth in vita E. 3.

² Rot. Fran. Anno 7. R. 2. m. 21. Campanie de la faughe Regali & Spagna. f. 110.

³ Joan. de Molina Chron. de Loys Reg. de Aragon. fol. 43. Bulla Martini 5. dat in Kal. Maij Anno Pontific. 8.

this Land, or leave of the Sovereign, have any Warrant.

It rests to instance out of a few Records, what the Kings of *England*, out of Regal Prerogative have done, either in restraint of Martial exercises, or private quarrels, or in determining them when they were undertaken : And to shew out of the Registers of former times, with what eye the Law and Justice of the State did look upon that Subject, that durst assume otherwise the Sword or Scepter into his own hand.

The restraint of Tournaments by Proclamation is so usual, that I need to repeat, for form sake, but one of many.¹

The first *Edward*, renowned both for his Wisdom and Fortune, *Publice fecit proclamari & firmiter inhiberi, ne quis, sub forisfactura terrarum & omnium tenementorum, torneare, bordeare, justas facere, aventuras quærere, seu alias ad arma ire præsumat, sine Licentia Regis speciali.*

By Proclamation *R. 2.* forbad any but his Officers, and some few excepted, to carry any Sword, or long Bastard, under pain of forfeiture and Imprisonment.²

The same King, in the 19th. of his reign, and upon the Marriage with the *French* Kings Daughter, commanded by Proclamation, *Ne quis Miles, Armiger seu alius Ligeus aut Subditus suus, cujus cunque status, aliquem Francigenam, seu quemcun-*

¹ Placita Anno 29. & 31. E. 1.

² Rot. claus. anno 19. R. 2. dat. 26 Feb.

*que alium qui de potestate & obedientia regis exist erit, upon what pretence soever, ad aliqui facta Guerrarum, seu actus armorum exigat, sub forisfactura omnium quæ Rēgi forisfacere poterit.*¹

And as in the Kings power it hath ever rested to forbid Combates, so it hath been to determine and take them up.

Thus did R. 2. in that so memorable quarrel between *Mowbray* and *Hereford*, by exiling them both.² And when *Sir John de Anestie*, and *Tho de Chatterton*, were ready to fight, *eandem querelam Rex in manum suam recepit*, saith the Record.

And *De mandato Regis diremptum est prælium inter Johannem Bolmer, & Bartramum de Vesana* in the time of *Henry the fourth*.³

Sir John Fitz-Thomas being produced before the *Earl of Gloucester*, Deputy of *Ireland*, and there Challenged by *Sir William de Vessy* to have done him wrong, in reporting to the King, that *Sir William*. aforesaid should have spoke gainst the King defamatory words, of which *Sir John* there presented a Shedule: *Willielmus, audito tenore Schedulæ prædictæ, dementitus est prædictum Johannem, dicendo; mentitus est tanquam falsus, & proditor, & denegavit omnia sibi imposita, & tradidit vadium in manum Justiciarij, qui illud admisit. Et prædictus Johannes advocavit omnia & dementitus est simil. dictum Willielm.* Where-

¹ Claus. in dorso 19. R. 2.

² Com. St. Alban. 22 R. 2.

³ 2 Pars par. anno 8. R. Rot Vascon. anno 9. H. 4.

upon the Combat was granted, and the time and place inrolled:¹ but the Process was adjourned into *England* before the King; who with his Council examining the whole proceeding, and that *Quia Willielmus attachiatus fuit ad respondend. Johanni prædicto super diffamatione principaliter, & non sit citatus in Regno isto placitare in Curia Regis, placita de diffamationibus, aut inter partes aliquas, Duellum concedere in placitis de quibus cognitio ad curiam Regis non pertinet*; And for that the Judge, *vadia predictorum Johannis & Willielmi cepit priusquam Duellum inter eos consideratum & adjudicatum suit, quod omnino contra legem est & consuetudinem Regni*: Therefore, *per ipsum Regem & Concilium concordatum est, quod processus totaliter adnulletur*: And that the said John and William eant inde sine die; *salva utriusque eorum actione sua, si alias de aliquo in prædicto processu contento loqui voluerint*.²

In a Combat granted in a Writ of right, *Philip de Pugil*, one of the Champions, *oppressus multitudine hominum se defendere non potuit*: Whereupon the people against him in perpetuam defamationem suam in eodem Duello Creantiam proclamabant, which the King understanding, *Assensu Concilii statuit, quod prædict. Philippus propter Creantiam prædict. liberam legem non omittat, sed omnibus liberis actibus gauderet, sicut ante Duellum gaudere consuevit*.

¹ Placita coram Rege, 22. E. 1.

² Rot. Parl. anno 23. E. 1.

What penalty they have incurred. that without law or license have attempted the practice of Arms, or their own Revenge, may somewhat appear by these few Records following.

William Earl of *Albemarle* was Excommunicated *Pro Torniamento tento contra præceptum Regis.*¹ To which agreeth at this day for the Duel the Council of *Trent*, & that held at *Biturio* in *Anno 1584.*²

John *Warren*, Earl of *Surrey* was fined at a thousand marks *pro quadum transgressionem in insultu facto in Alanum de la Zouch.*³

Talbois was committed to the Tower for attempting to have slain the Lord *Cromwel.*⁴

And because *Robertus Garvois insultum fecit, & percussit Edwardum filium Willielmi, inquisitio facta est de omnibus tenementis & catallis prædicti Roberti.*

Edw. Dallingrige accused by *Sr. John St. Leger* before the Kings Justices *pro venatione, & aliis transgressionibus*, answered, that these accusations were false, and threw down his Glove, and challenged *disrationare materias prædictas versus prædictum Johannem per Duellum. Sed quia contra legem terræ vadiavit inde Duellum*, he was committed to Prison, *quousque satisfaceret Domino Regi pro contemptu.*⁵

¹ Pat. in dors. 4. H. 3.

² Conc. Trid. Sess. 9. Tit. Decreta Reform. Ex Con. Biturien. fol. 1022.

³ Claus. anno 3. E. 1. m. 2.

⁴ Parl. anno 24. H. 6.

⁵ Placita de quo warranto anno 8. R. 2. Sussex.

Sir *Nicholas de Segrave*, a Baron, Challenged Sir *John de Cromwel*, and contrary to the Kings prohibition, because he could not fight with him in *England*, dared him to come and defend himself in *France*; therein (as the Record saith) subjecting as much as in him lay, the Realm of *Engl.* to the Realm of *France*, being stayed in his passage at *Dover*, was committed to the Castle, & brought after to the Kings Bench, & there arraigned before the Lords, confessed his faults, & submitted himself to the King, *de alto & basso*: Wherefore judgment is given in these words, *Et super hoc Dominus Rex volens habere avisamentum Comitum, Baronum, Magnatum, & aliorum de consilio suo, injunxit eisdem, in homagio, fidelitate & ligeantia quibus ei tenentur, quod ipsi confiderent qualis pœna pro tali facto fuerit infligenda. Qui omnes, habito super hoc consilio, dicunt quod hujusmodi factum meretur pœnam amissionis vite*, Whereupon he was committed to the Tower, & *Ro. Archard*, that attended him in *France*, was committed to prison, arraigned, and fined at 200. marks. In the end, and after much intercession, the L. *Segrave* was pardoned by the King, but could not obtain his liberty, until he had put in security for his good behaviour.¹

But this course holdeth proportion with an antient law made by *Lotharius* the Emperor, in these words, *De his qui discordiis & contentionibus studere solent, & in pace vivere noluerint, & inde*

¹ Placita coram Rege Trin. 33. E. 1.

*convicti fuerint, similiter uolumus, ut per fidejussores ad nostrum Palatium veniant, & ibi cum nostris fidelibus considerabimus quid de talibus hominibus faciendum sit.*¹

¹ Ex lege Longobard. 45. circa annum 830.



A B R I E F
A B S T R A C T
Of the Question of
P R E C E D E N C Y
B E T W E E N
E N G L A N D
A N D
S P A I N.

Occasioned by *Sr. Henry Nevil* the
Queen of *Englands* Ambassador,
and the Ambassador of *Spain*, at *Calais*,
Commissioners appointed by the *French*
King, who had moved a Treaty of Peace
in the 42. year of the same Queen.

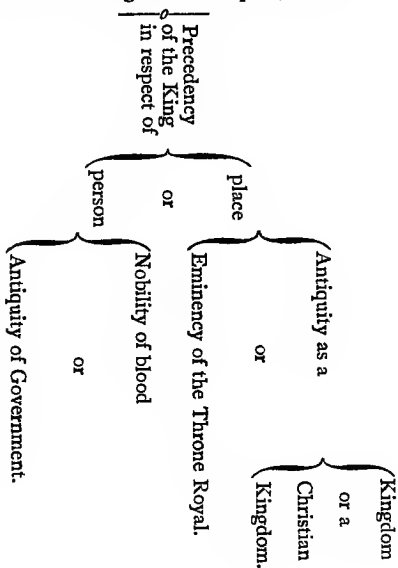
Collected by *ROBERT COTTON*, Esq; at
the commandment of Her Majesty.
Anno Domini, 1651.

LONDON: Printed in the Year, 1679.





A BRIEF
A B S T R A C T
Of the Question of Precedency
between *England* and *Spain*, &c.



*Precedency of England in respect of
the Antiquity of the Kingdom.*

TO seek before the decay of the *Roman* Empire the antiquity of any Kingdom is meer vanity, when as the Kingdoms of Christendom, now in being, had their rising from the fall thereof; at which instant *Vortigern* a Native of this Isle, first established here a free Kingdom four hundred and fifty years after Christ, and so left it to the *Saxons*, from whom her Majesty is in descent Lineal; and it is plain, that as we were later than *Spain* reduced under the *Roman* yolk, so we were sooner infreed.

Subsequence of Spain.

Spain, since the dissolution of the *Roman* Empire entituled no King, till of late, for *Atalaricus* from whom they would, upon slender warrant, ground their dissent, was never stiled *Rex Hispaniæ*, but *Gothorum*, and the Kingdom of *Castile*, wherein the main and fairest antiquity of *Spain* rested, begun not before the year of Christ 1017, whereas they were but Earls of *Castile* before;¹ so that the Kingdom of the *English* began (which was always as *Beda* observeth a Monarch in a *Heptar-*

¹ Rodericus Sanctius, pag. 312.

chie) 460. years at the least before the Kingdom of Castile or Spain.¹

Precedency of England in respect of Antiquity of Christian Religion.

JOSEPH of *Arimathea* planted Christian Religion immediately after the passion of Christ, in this Realm.²

And *Aristobulus* one of them mentioned by Saint Paul, *Romans 6.* was *Episc. Brittanorum*, and likewise *Simon Zelotes*.³

The first Christian King in *Europe* was *Lucius Surius*.⁴

The first that ever advanced the Papacy of *Rome* was the Emperor *Constantinus*, born at *York*.⁵ Of whom in the *Roman Laws* near his time is written, *Qui veneranda Christianorum fide Romanum munivit imperium*; And to him peculiarly more than to other Emperors are these Epithetons attributed, *Divus Divæ memoriæ, divinæ memoriæ orbis Liberator, quietis fundator, Reipublic. instaurator, publicæ libertatis auctor, Magnus Maximus, Invictus; Restitutor urbis Romæ, atque orbis*.⁶

And there have been more Kings and Princes of

¹ Beda.

² Baronius.

³ Dorotheus.

⁴ Beda.

⁵ Baronius & Donaco Constantini.

⁶ In inscriptionibus antiquis.

the Blood Royal, Confessors and Martyrs in *England*, than in any one Province in *Europe*.¹

And from *Ethelbert* King of *Kent*, (Converted *Anno* 596) until this day, Christianity hath been without interruption continued.

Subsequence of Spain.

In the time of *Claudius*, Saint *James* preached in *Spain*, but gained only nine Souls.² So did he in *Ireland*, as *Vincentius* saith; and they cannot count Christian Religion to be then planted in *Spain*, which shortly after was first tainted with the Heresie of *Priscilian*, then with *Gothish* Arianism, and after defaced with *Moorish* Mahometism from 707 years after Christ, in continuance 770 years, until *Ferdinando*, King of *Arragon*, and *Castilia* utterly expelled the *Moors*.³

Precedency of England in respect of the more absolute Authority Political.

THE Queen of *Englands* power absolute in acknowledging no superior, nor in vassallage to Pope or Emperor.⁴ For that subjection which by King *John* was made to *Innocentius* the third,

¹ Fasciculus temporis.

² Tarapha.

³ Tarapha.

⁴ Eulogium, lib. 5.

after in Parliament, *Per præceptum Domini Papæ septimo Julii, Cum fidelitate & homagio relaxatur omnino.*

Sir *Thomas Moore* in his debellation, saith, the Church of *Rome* can shew no such deed of subjection, neither that the King could grant it of himself. And *Eugubinus* in his defence of *Constantines* donation, nameth not *England*, where he recited all the feodary Kingdoms of the *Papacy*; ¹ the *Peter-pence* were not duties but *Eleemosyna Regis*, neither the *Rome-Scot*, but *Regis larga benignitas: Parem non habet Rex Angliæ in Regno suo; multo fortius nec superiorem habere debet*, saith *Bracton*.²

Ipse non debet esse sub homine, sed sub Deo, & habet tantum superiorem Judicem Deum: Likewise in appointing Magistrates; pardoning Life, Appeal, granting priviledges, taking homage; and his *Jura Majestatis* not limited in *censu nummorum*, *Bello judicando*, *Pace ineunda*.³

Eleutherius the Pope, 1400 years ago, in his Epistle to *Lucius* King of *Brittain*, stiled him *Vicarius Dei in regno suo*, so is the King of *England* in *Edgars* Laws; and *Baldus* the Lawyer saith, *Rex Angliæ est Monarcha in regno suo*; and *Malmsbury*, *Post conversionem ad fidem tot & tantas obtinuit Libertates quot imperator imperia*.⁴

¹ Ex legibus Sancti Edwardi.
³ Bracton.

² Ex legibus Canuti.
⁴ Baldus. Malmsbury.

Subsequence of Spain.

The King of *Spain* hath no Kingdom, but is feodary either to *France* or *Castilia*, enthralled by oath of subjection and vassallage, from King *Henry*, to *Charles* the fifth of *France* 1369. *Ex fœdere contracto*: And for the *Netherlands*, there is homage due to the *French* King, or the *Papacy*, as *Arragon* to *Innocentius* the third, by King *Peter* 1204. confirmed by *Ferdinand* and *Alphon-sus* 1445. and from *James*, by the like oath, 1453.

And to *Sardinia* and *Corsica* the King of *Ar-ragon*, from the Bishops of *Rome*, were under oath of subjection invested: *Ex formula fiducia*.

The Kingdom of *Portugal* in vassallage to the Pope under an Annual Tribute.

And the *Canaries*, *Hesperides*, and *Gorgon* Islands subjected to the See of *Rome*, under the chief Rent of four hundred *Florins*, by *Lewis* King of *Spain* 1043.

Of both the *Indies* *Alexander* did reserve the regalities; of *Sicilia*, the Church is chief Lord.¹

And *Granado* and *Navarre* were made feodary to the Pope, under *Julius* the second.

Naples at every change sendeth a *Palfrey*, as a *Heriot*, due to the Church of *Rome*, and of the Empire he holdeth the Dukedom of *Millain*.

¹ Ex Eugubino.

So that it is questionable among *Civilians*: whether he be *Princeps* which holdeth in *feodo* all of others.

His absolute authority restrained in *Arragon* by *Justitia Arragonica*. In *Biscay* and other places, by particular reservations. And his *Jura Majestatis in Censu Nummorum, Bello judicando, Pace ineunda*, &c. Limited by the priviledges of the State, as at *Brabant* and elsewhere in his *Spanish Territories*; *Ex propriis constitutionibus & privilegiis*.

*Precedency of England in respect of
more absolute authority Ecclesiastical.*

HER Majesties power more absolute in this (confirmed by antient Custom and priviledg) than any other Christian Prince. For no *Legat de Latere* in *England*, *de jure* allowed, but the Archbishop of *Canterbury*.¹

If any admitted by curtesie, he hath no Authority to hold plea in the Realm, contrary to the Laws thereof; *Placita 2 Hen. 4.* and before he was admitted and entered the Realm, he was to take oath, to do nothing derogatory to the King and his Crown. *Placita Anno primo Henr. 7*

¹ Ex Ranulpho Nigro.

No man might denounce the Popes Excommunication, nor obey his Authority on pain to forfeit all his goods, without assent of the King or his Council. *Placita 23. and 34 Edw. Rot. Dunelm.*

Henry the first called a Provincial Council, so did *Canutus* and others.¹

No appeal to *Rome* without the Kings Licence : *Anno 32 & 34 Edw. 1.* Inventure of Bishops and Churchmen, in the Kings hand. *Ex Matt. Paris & Hen. Huntingdon.*

De gestis Pontific, Donelm Placita. 32 Edw. 1. and in the *32 Edw. 3.* Where the reason of the Kings Ecclesiastical Authority, to suspend or bestow Church-livings is yielded, *Qui reges Angliae unguntur in Capite.*

Subsequence of Spain.

The King of *Spain* can prescribe no custom to prohibit the Popes Legat, nor useth any Authority Penal over the Clergy ; *Spain* can produce no Example of any Provincial Council by call of the King. For *Bodin. lib. 1. cap. 6.* towards the end writeth, that the Kings of *Spain*, *Non sine magna mercede impetraverunt Sixti Pontificis Romani rescripto ne peregrinis sacerdotia tribuerentur.*

Appeals from the King to *Rome* allowed. So the Kings of *Spain* have meerly no power Ecclesi-

¹ Malmesbury.

astical, having dispoiled himself of all, by intral-
ling their Kingdom to the Church of *Rome*.

*Precedency of England in respect of
Eminency of Royal Dignity.*

THE Kings of *England* are anointed as the
Kings of *France*, who only have their pre-
heminnence before other Kingdoms declared by
miracle, in the cure of the *Regius morbus*, which
they can effect only; and that of antiquity: For
Edward the Confessor healed many.¹

2. They are superiour Lords of the Kingdom of
Scotland and *Man*, and *Vicarii Imperii*; as *Ed-
ward* the third and *Oswald* intituled *Rex Christi-
anissimus*: *Ve. Beda lib. 1.*

3. They are named *Filii adoptivi Ecclesiæ*, as
the Emperor *Filius Primogenitus*, and the King
of *France*, *Filius natu minor*.²

4. They are accounted among *Reges Superillus-
tres*, in this order: *Imperator, Rex Franciæ, Rex
Angliæ & Franciæ*.³

5. *England* in the General Councils at *Constance*
and *Pisa*, was made a Nation, when as all Christi-
anity was divided into four Nations, *Italicam,
Gallicam, Germanicam, & Anglicam*.⁴

¹ Ex libro Barnwellensis
Cænobiæ.

³ Corsettus.

² Platina.

⁴ Ex lib. Sacrarum Cereemoniar.

6. Whereupon, seat accordingly was allowed at the three General Councils, viz. *Constance*, *Pisa*, *Sienna*, to the *English* Ambassadors next to the Emperour on the left hand, and to the King of *France* on the right hand : which were their Ancient seats before the *Spaniards* at *Basil* 1431. begun to contend for Precedency.

Where it was in the first Session ordered, that all Legats should hold such their places as they had enjoyed heretofore, according to their worth and antiquity: Yet in the Council of *Trent* the precedence of *France* with *Spain* was made questionable.

Augustus de Cavelles, as the strongest reason to bar the *French* Interest, inferred the Queen of *England* from her Ancestors, both in respect of Inheritance, Conquest and Gift, *de jure* Queen of *France*. By which reason when he doth shake or overthrow (as he thinketh) the Precedency of *France*, he doth consequently strengthen the Precedency of *England*.

And in Treaty between *Henry* the seventh, and *Philip* of *Castile*, 1506. the Commissioners of *England* did subsign before the other. And in the Treaty of Marriage with Queen *Mary*, Anno 1553. those of *England* are first rehearsed. And at *Burbrough*, Anno 1588. they gave it to her Majesties Ambassadors.

And yet in respect of the Eminency of this Royal Throne, to the See of *Canterbury* was

granted by *Urbane*, at the Council of *Claremount*, Anno 1096. for ever, the seat in General Council, at the Popes right foot, who at that time uttered these words ; *Includamus hunc in orbe nostro tanquam alterius orbis Pontificem Maximum.*

Subsequence of Spain.

1. The Kings of *Castile* are never anointed, neither hath the *Spanish* Throne that vertue to endow the King therein invested, with the power to heal the Kings evil : For into *France* do yearly come multitudes of *Spaniards* to be healed thereof.

2. No Kingdom held in fee of him.

3. *Spain* then not remembred one of the Sons of the Church.

4. The King of *Spain* placed last after the King of *England*, *inter superillustrés*, by the said *Corsettus*.

5. The Kingdom was then comprised under *Italica natio*, and no Nation of itself, as in old it was called *Iberia minor*, as a member of *Italy*, *Iberia major*.¹

England being *Britannia major*.²

At which time the *Spaniard* contented himself with the place next to the King of *France*.³

¹ Virgilius.

² Cosmographia.

³ Garsius.

*Precedency of England before Spain,
in respect of the Nobility of
Blood.*

HER Majesty in Lineal descent is deduced from Christian Princes for 800 years, by *Ethelbert* a Christian 596. and the Matches of her progenitors most Royal with *France, Germany, Spain.*

Subsequence of Spain.

For their Antiquity of descent as Kings of *Spain* is chiefly from the Earls of *Castilia* about 500 years since.¹

For they cannot warrant their descent, from *Atalaricus* the *Goth*, and as Dukes of *Austria* from the Earls of *Hapsburgh* only about 390 years since.

Their matches anciently for the most part with their subjects, and of late in their own blood.

*Precedency of England, in respect of
antiquity of Government.*

HER Majesty having reigned now most happily 42 years.

This we would not have alledged, but that the

¹ Vide Tarapha.

Spanish Ambassador at *Basil*, objected in this respect the minority of *Henry* the sixth.

Her sex herein nothing prejudicial, when as both divine and humane Laws do allow it, and accordingly *Spain*, *England*, and *Hungary*, inso-much, that *Mary* Queen of the last, was always stiled, *Rex Maria Hungariae*.¹

Subsequence of Spain.

The King of *Spain* yet in the Infancy of his Kingdom.

For the Precedency may be alledged, viz.

The Antiquity of the Kingdom, when as *Castile*, *Arragon*, *Navar* and *Portugal*, had their first Kings about 1025.

The ancient receiving of the Christian Faith, by *Joseph* of *Arimathea*, *Simon Zelotes*, *Aristobulus*, yea, by *St. Peter* and *St. Paul*, as *Theodoretus*, and *Sophronius* do testifie.

The Kingdom is held of God alone, acknowledging no superiour, and in no vassalage to the Emperour or Pope, as *Naples*, *Sicilia*, *Arragon*, *Sardinia*, and *Corsica*, &c.

Sir *Thomas Moore* denyeth that King *John* either did, or could make *England* subject to the Pope, and that the Tribute was not paid (pag. 296.) but

¹ *Tilius*.

the *Peter-pence*, were paid to the Pope by K. John, by way of Alms.

The absolute power of the King of *England*, which in other Kingdoms is much restrained.

England is accompted the fourth part of Christianity; For in the Council of *Constance*, all Christianity was divided, in *nationem*, viz. *Italicam*, *Germanicam*, *Gallicanam* & *Anglicanam*, and accordingly gave voices.¹

England in the opinions of the Popes is preferred, because in it is contained in the Ecclesiastical division, two large Provinces, which had their several *Legati nati* when as *France* had scanty one.

The Emperour is accompted *major filius Papæ*, the King of *France*, *filius minor*; the King of *England*, *filius adoptivus*.

The Archbishops of *Canterbury*, are accompted by the people, *tanquam alterius orbis Papæ*, and anointed to have place in General Councils, at the Popes right foot.

The title of *Defensor fidei*, as honourably, and as justly bestowed upon the Kings of *England*, as *Christianissimus* upon the *French*; or *Catholicus* upon the *Spaniard*.

Edward the third King of *England*, was created by the Emperour, *Vicarius Perpetuus Imperii*; *cum jure vitæ necisque in omnes Imperii subditos*,² and the Kings of *England*, *Papæ Vicarii*, by Pope *Nicolas* the second, *vide COPGRAVE*.³

¹ 1415.

² 1338.

³ 1065.

Innocentius the fourth, the Pope said, *vere hortus deliciarum est Anglia, vere puteus inexhaustus ubi multa abundant, &c.*¹

King *Hen. 2.* elected King of *Jerusalem* by the Christians.²

Richard the first, conquered the Kingdom of *Cyprus*, and gave it unto *Guy Lusignan*, whose posterity reigned there until of late years.³

Kings of *England* are superiour Lords of the Kingdom of *Scotland*, and are absolute Kings of all the Kingdom of *Ireland*.

England is not subject to Imperial and Roman Laws, as other Kingdoms are, but retaineth her ancient Laws, and *Pura municipalia*.

King *Henry* the sixth was Crowned King of *France* at *Paris*.

The Kings of *England* did use the stile of a Sovereign, viz. *Altitonantis Dei, Largiflua Clementia, qui est Rex Regum & Dominus Dominorum*.

Ego Edgarus Anglorum βασιλεus Omniumque Regum Insularumque Oceani Britannici circumjacentium, cunctarumque Nationum quæ infra eam includuntur, Imperator ac Dominus.

¹ 1246.

² 1185.

³ 1191.

A
REMONSTRANCE
OF THE
TREATIES
OF
AMITY
AND
MARRIAGE

Before time, and of late, of the House
OF

AUSTRIA and *SPAIN*,

With the Kings of *England*, to advance
themselves to the Monarchy of *Europe*.

Written by Sir *ROBERT COTTON*, Knight
and Baronet.

LONDON: Printed in the Year, 1679.





A
R E M O N S T R A N C E
O F T H E
T R E A T I E S
O F
A M I T Y
A N D
M A R R I A G E

Before time, and of late, of the House of
AUSTRIA and *Spain*, &c.

Most Excellent Majesty,

WE your Lords Spiritual and Temporal, and the
Commons of your Realm Assembled in this
your Parliament, having received out of your meer
grace, your Royal command, to declare unto your
Highness our advice and Counsel, for the further
continuing, or final breaking of the two Treaties
between your Majesty, the Emperor, and the
Spanish King, touching the rendition of the Pala-

tinate, to the due and former obedience of your Illustrious Son the Prince Palatine; and that of Marriage, between the Lady *Mary*, Infant of *Spain*, and the most excellent Prince your Son, now Prince of *Wales*: We conceive it not unfit to offer up to your admired wisdom and consideration, these important Motives that induced our subsequent advice and resolution.

By contemplation whereof, we assume to our selves that your Majesty apparently seeing the infinite Calamity fallen of late unto the Christian world, by means of these disguised Treaties of Amity, and Marriage before time, frequently used with your progenitors, and now lately with your self by the House of *Austria* and *Spain*; to advance themselves to the Monarchy of *Europe*, will graciously be pleased to accept our humble advice.

Maximilian the Emperor, and *Ferdinand* of *Spain*, uniting by Marriage the possessions of the House of *Austria* (1503), the *Netherlands*, *Arragon*, *Castile*, *Sicilia*, and their new discoveries, to one succeeding heir, began (though afar off) to see a way whereby their Grand-child *Charles* might become the Master of the Western world, and therefore each endeavoured by addition of Territories, to facilitate that their desired end.

France was the only obstacle, whose ambition and power then was no less than theirs; he lay in their way for *Gelders*, by siding with Duke *Charls*; for *Navarre*, by protecting *Albret* their King, for

their peeces in *Italy*, by confederation with the State of *Venice*; and for *Naples* and *Millain* by pretence of his own. They were too weak to work out their way by force, and therefore used that other of craft.

Lewis is offered for his Daughter *Claude* the Marriage of *Charls* their Grand-child, it is at *Bloys* accepted, and to them confirmed by Oath: the claim of *France* to *Naples* by this released, one hundred thousand Crowns yearly, by way of recognition only to *France* reserved, who is besides to have the investiture of *Milain* for a sum of money, which the Cardinal *D'amboyes*, according to his Masters Covenant, saw discharged.

Ferdinand thus possessed of what he then desired, and *Maximilian* not meaning to strengthen *France* by addition of that Dutchy, or repayment of the money, broke off that Treaty to which they were mutually sworn, affiancing *Charls* their Heir to *Mary* the Daughter of *Henry* the 7th. to whose Son *Arthur*, *Ferdinand* had Married *Katharine* his youngest Daughter (1506).

This double knot with *England*, made them more bold (as you see they did) to double with *France*: but the Prince of *Wales* his untimely death, and his fathers that shortly followed, enforced them to seek out, as they did, another tye, the spirit and power of *Lewis*, and their provocations justly moving it; they make up a second Marriage for *Katharine* with *Henry* the eighth,

Son of *Henry* the seventh (1510); and are enforced to make a Bull dated a day after the Popes death to dispense with it ; and consummate *per verba de præsenti*, by Commissioners at *Calis*, the former Nuptials of *Charls* and *Mary*, publishing a Book in print of the benefit that should accrew to the Christian world by that Alliance.

Henry the Eighth left by his Father young and rich, is put on by *Ferdinand* to begin his right to *France* by the way of *Guyen* (1512); and to send his forces into *Spain*, as he did, under the Marquess *Dorset*, to joyn with his Father in Law for that design, by reputation whereof *Albret* of *Navarre* was enforced to quit that State to *Spain*; who intended as it proved, no further use of the *English* Army, than to keep off the *French* King from assisting *Albret*, until he had possessed himself of that part of *Navarre*, which his successors ever since retain. For, that work ended, the *English* Forces were returned home in Winter, having nothing advanced their Masters Service.

The next year to assure *Henry* the eighth, grown diffident by the last carriage of *Maximilian* and *Ferdinand*, whose only meaning was to lie busying of the *French* King at home, to make an easie way abroad to their former ends, project to the *English* King an enterprise for *France*, to which they assured their assistance, by mutual confederacy at *Mecklin*; for which *Bernard de Mesa*, and *Lewis de Carror*, for *Castile* and *Arragon*, and the Em-

peror in person gave oath, who undertook, as he did, to accompany *Henry* the eighth to *Turwyn*.

Ferdinand in the mean time dispatching the Vice-roy of *Naples* into *Italy*, to busie the *French* King and *Venetian*, that the *English* King with facility might pursue the conquest of *France*.

Henry the Eighth had no sooner distressed the *French* King, but *Ferdinand*, respecting more his profit than his faith, closed with *Lewis*, who renounced the protection of *Navarre* and *Gelders*, so he and *Maximilian* would forsake the tie they had made with *Henry* the eighth.

The Vice-Roy of *Naples* is instantly recalled from *Bressa*; a truce with *Spain* and *France* concluded; *Quintean* sent to the Emperor to join in it; *Don John de Manuel*, and *Diego de Castro* employed to work the Emperor, and *Charles* the Grandchild to exchange the marriage of *Mary*, *Henry* the eighths Sister, with *Rene* the second Daughter of the *French* King: and *Lewis* himself to take *Elanor* their Neece to Wife; and to clear all dispute about the conditions, a blanck is sent from *Spain* to the *French* King to over-write what he please.

Henry the eighth perceiving this close and foul play, entertaineth an overture made by the Duke de *Longevil*, then Prisoner in *England*, for a Marriage of *Mary* his Sister with the *French* King; which effected, the two subtile Princes failed of their ends.

Lewis dead, and *Francis* succeeding, he made his first entrance a league with *England*, the recovery of *Milain*, which he did, the protection of his Neighbours, the reduction of the *Swisses* from the Imperial side, for which he imployed to them the Bastard of *Savoy* (1515).

Maximilian and *Ferdinand* seeing by this all their new purchases in danger, and that they had now no disguised Marriage again to entertain the credulity of *Henry* the eighth, they work upon his youth and honour. The Emperor will needs to him resign his Imperial Crown, as wearied with the weight of Government and distraction of *Europe*, which needed a more active man than his old age to defend the Liberty of Subjects, and Majesty of Princes from the Tyranny of *France*.

That he had made the way already for him with the Electors; that he would send the Cardinal *Sedunensis*, with ample Commission into *England* to conclude the resignation, which was done. That at *Aquisgrane* he will meet *Henry* the eighth, and there give up his first Crown; from thence accompany him to *Rome*, where he should receive the last right of the Imperial dignity, putting *Verona* into his protection, then assailed by the *Venetians*; and giving him the investiture of *Milaine* in feodo, more *Imperiali*, then in possession of the *French*, to tye his aid the faster against these States.

Hereupon *Henry* the eighth concluded a defen-

sive league with the Bishop of *Mesa* and Count *Daciana*, authorised Commissioners from the Emperor, *Arragon*, *Castile*, and sendeth his Secretary Master, *Pace* with money, for *Maximilian* had already borrowed and broken to entertain the *Swissers* into pay and confederacy against *France* (1516).

Charles the Grandchild must feign a difficulty to sway his League, until the Emperor, at *Henry* the eighth's cost, was fetched from *Germany* to the *Netherlands* to work his Nephew to it, who in the interim had closely contracted a peace by the Grandfathers consent with *France*. No sooner had *Maximilian* received ten thousand *Florins* of the *English King* to bear his charge, but the Treaty of *Noyon*, was closely between him; *Arragon* and *Castile* concluded, whereby the ten thousand Crowns for recognition of *Naples* was passed from *France* to the Emperor; and *Charles* himself affianced to *Loysia* the *French Kings* Daughter, and also darkly carried, that when Master *Pace* at *Agno* came down from the Emperor with his Signature of the confederacy, the *French Kings* Ambassador went up the back Stairs with six thousand *Florins*, and the transaction of the Pension of *Naples* to *Maximilian*, and there received his confirmation of the Treaty at *Noyon*; notwithstanding the same day the Emperor looking upon his George and Garter, wished to *Wingfield*, *Henry* the eighths Ambassador, that the thoughts of his heart were transparent to his Master.

So displeasing was this foul play to the Cardinal *Sedunensis*, the Emperors chief Counsellor, that he writ *contra perfidiam Principum*, against the falshood of his own Lord, a bitter Letter to the *English King*; who finding again how his youth and facility was overwrought by these two old and subtil Princes, his vast expences lost, his hopes of *France* lesned, and that of the Empire vanished (for *Maximilian* is now conferring the title of *Rex Romanorum* on one of his Nephews) concludeth, by mediation of the Admiral of *France*, a peace with that King; a Marriage for the *Dolphin Francis* with the Lady *Mary*, and the re-delivery of *Tournay*, for a large Sum of money (1518).

Not long after *Maximilian* dieth, leaving the Imperial Crown in Competition of *France* and *Castile*. *Charles*, whose desire was, as his Ancestors, to weave that wreath for ever into the *Austrian* Family, began to fear the power of his corrival, with whom the Pope then sided, and the *English King* stood assured by the late Marriage of their two Children. To draw off the Pope he knew it was impossible, he was all *French*. To work in *Henry* the eighth, he found the inconstancy of his predecessors, and the new match to lie in the way. To clear the one, he is fain in his Letters into *England*, to load his two Grandfathers with all the former aspersions (1519), his years and duty, then tying him more to obedience than truth: but that he was a man, and himself now; that

mutual danger would give assurance, where otherwise single faith might be mistrusted ; *France* was in it self, by addition of *Britany*, more potent than ever, this man had rejoyned to it some important pieces in *Italy*, and should his greatness grow larger up by accession of the Imperial Crown, how easie were it to effect indeed what he had fashioned in Fancy, the Monarchy of *Europe*. As for the young Lady, who was like to lose her Husband, if *Henry* the eighth incline to this Counsel, and assist *Castile* in pursute of the Emperor ; he was contented (for *Loisia* of *France*, espoused to him by the Treaty at *Noyon*, was now dead) to make up the loss of the Lady *Mary* by his own Marriage with her ; a match fitter in years, for the *Dolphin* was an Infant, as great in dignity ; for he was a King, and might by the assistance of her Father be greater in being Emperor.

Thus was *Henry* the eighth by fears and hopes turned about again (1519), and *Pace* forthwith sent to the Electors with instructions and money, who so wrought, that *Charls* was in *July* chosen Emperor : and that it was by the sole work of *Henry* the eighth, himself by Letters under his hand acknowledged. From *Aquisgrane*, he cometh Crowned the next year for *England*, Weddeth at *Windsor* the Lady *Mary* ; concludeth by league the invasion of *France*, and to divide it with *Henry* the eighth by the River of *Redon*, making oath at the high Altar at *Pauls* for performance of both those Treaties.

Herupon *France* is entred by the *English* Army (1522), and *Burbon* wrought from his Allegiance by a disguised promise of this Emperor of *Elia*nor his Sister for Wife, to raise forces against his Master, which he did, but was paid by the *English* King.

The *French* King to carry the Wars from his own doors, maketh towards *Milan*; whereby *Burbon* and his forces were drawn out of *Province* to guard the Imperials in *Italy* (1524, 1525).

At *Pavie* they met (1526), and the *French* King was taken Prisoner, and forthwith transported into *Spain*, where at *Madrid* the Emperor forced his consent to that Treaty, whereby he gained *Burgundy*, and many portions in the *Netherlands*; leaving *Henry* the eighth who had born the greatest charge of all that Warre, not only there unsaved, but calling a Parliament at *Toledo*, taketh by assignment of his States, *Isabella* of *Portugal* to Wife, procuring from Pope *Clement* a Bull to absolve him of his former Oaths and Marriage, working not long after by *Ferdinandus* his Chaplain, the Earl of *Desmond* to Rebel in *Ireland*, and *James* the fifth of *Scotland*, by promise of Marriage with his Neece, the Daughter of *Denmark*; to whom he likewise sent Munition and Money, to busie *Henry* the eighth at home, that he might be the less able to requite these indignities he had so done him. And to shew that his ambition was more than his piety, he ordered by instructions, first the Duke of *Burbon*, and after *Hugo de Mon-*

sado to surprise *Rome* and the Pope; sending *Angelo* an observant Frier thither, whom he had assigned to the Papal Throne, intending to reduce the choice of the See from the Cardinals again, to the Empire, and there to set up a first Monarchy.

But his design by a needful confederacy, as now of the Pope, *French* King, Princes of *Italy* and others, with *Henry* the eighth, who was made *Caput fœderis*, was to the safety of all Christian Princes, prevented happily, and he himself reforced at *Cambray*, in the year one thousand five hundred twenty and nine, to re-deliver the *French* King, and many pieces of that Crown he had wrested away by the Treaty of *Madrid*, and to sit down with moderate and fair conditions against his will.

His waking Ambition would not long let him rest, but again he plotteth to break the knot between the *French* and *English* Kings.

To work this, he assureth, by contract, his assistance in furtherance of *Henry* the eighths Title of *France*; and to make the greater belief, offereth a Marriage to the Lady *Mary*, so she might be declared again Legitimate.

Henry the eighth accordeth with him, and advanceth his Army into *France*, where he had no sooner recovered *Bullein*, but the Emperor catching advantage on the *French* Kings necessities, falleth off from his former faith and promise, making up a peace perpetual with *France*, whereby all claim from the Crown of *Arragon*, *Naples*, *Flan-*

ders, Arras, Gelders, and other parts was released, and mutual confederation for restitution of the Catholick Religion concluded betwixt them both (14 Septemb. 1545).

Edward the sixth succeeding his Father forbears all Treaties with *Spain*, but those of intercourse, persisting as formerly in union with the Princes of *Germany*, and his other Allies, preventing those expences and dangers, which his Fathers belief and confidence of *Spain* had tasted of before.

His Sister and Successor *Mary*, entertaining that fatal Amity with the Emperor and his Son, by Marriage, embarked her Estate in a dangerous War, whereby the Realm was much impoverished, and *Callice* lost (1558).

Her Sister of happy memory succeeding made up that breach, by that three-fold Treaty at *Cambray*, 1558. Where King *Philip*, as bound in honour, stood bound for aid in Recovery of *Callice*; But his own ends by that Convocation served, he left her after to work out her safety her self alone; yet fearing that a Union of *France* and your Realms, in the person of your most vertuous Mother, then married into *France*, he under a feigned pretence of Marriage, wrought by *Caraffa* and his Faction of other Cardinals, a stay of the Popes Declaration against the Queen of *England*, more his own fears, than his love procuring it.

Yet the Princely disposition of this Noble Lady, taking those pretences for real favours, was not

wanting both with her Counsel and Purse ; for she employed many of her ablest Ministers to mediate, and disbursed upon the assurance of *Brabant*, and the good Towns of *Flanders* whose bonds are yet extant, for reduction of those Provinces to his obedience, one hundred and fifty thousand pounds (1578).

But when she found his aim to be the violating of their antient liberties, and in it saw her own danger involved ; her Council advised her, not to leave the assistance of those people, *France*, and those other Princes that lay as her self in danger, to be swallowed up in his ambitious ends, who when he intended the Conquest of her Estate, to blind her with security, presented by *Carolo Lanfranco*, and the Prince of *Parma*, a Proposition of Peace (1587) ; graced with as many Arguments of honest meaning, as his Progenitors had used to her Father, which she accepted, but not without a prudent suspicion. For when the Treaty was in height, he brought his invincible Navy to invade the Realm, the success whereof was answerable to his Faith and Honor. She left not that injury without Revenge, but forced him in his after Reign, to that extremity, that he was driven to break all faith with those Princes that trusted him ; and paid for one years Interest, about twenty five thousand Millions of Crowns (1597).

So low and desperate in Fortunes your Highness found him, when to all our comforts you took

this Crown (1603) ; Then from the abundant goodness of your peaceable Nature, you were pleased to begin your happy Raign with general quiet, and with *Spain* the first, which should have wrought in noble Natures a more grateful Recompence than after followed : For long it was not before *Tyrone* was heartned to rebel against your Highness, and flying, had pension at *Rome*, paid him from the *Spanish* Agent (1606). His Son *Odonel Tirconel*, and others your chiefest Rebels, retained ever since in Grace and Pay with the Arch-dutchess, at *Spains* devotion (1612).

As soon as your eldest Son of holy memory now with God, was fit for marriage, they began these old disguises, by which, before they had thriven so well, &c.

Twenty-Four

ARGUMENTS

Whether it be more expedient to suppress

POPISH PRACTICES

Against the due

ALLEGEANCE

OF HIS

MAJESTY.

By the Strict Executions, touching *Jesuites*
and *Seminary* Priests.

OR,

To restrain them to Close Prisons, during
life, if no Reformation follow.

Written by Sir *ROBERT COTTON*, Knight
and Baronet.

LONDON: Printed in the Year, 1679.





Twenty-Four

ARGUMENTS

Whether it be more expedient to suppress

Popish Practices

Against the due

Allegiance to His Majesty.

By the Strict Execution touching *Jesuits*,
and *Seminary* Priests, &c.

I AM not ignorant, that this latter Age hath brought forth a swarm of busie heads, which measure the great Mysteries of State, by the rule of their self-conceited wisdoms; but if they would consider, that the Commonwealth, governed by grave Counsellors, is like unto a Ship directed by a skilful pilot, whom the necessities of occasions, and grounds of reason, why he steereth to this, or that point of the Compass, are better known, than

to those that stand aloof off; they would perhaps be more sparing, if not more wary in their resolutions. For my own particular I must confess, that I am naturally too much inclined to his opinion, who once said, *Qui bene latuit, bene vixit*, and freshly calling to mind the saying of *Functius* to his friend, at the hour of his untimely death, DISCE MEO EXEMPLO MANDATO MUNERE FUNGI: ET FUGE SEU PESTEM——

I could easily forbear to make my hand-writing the Record of my opinion, which nevertheless I protest to maintain rather deliberately, than by the way of a conclusive assertion; therefore without wasting precious time any longer with needless Prologues, I will briefly set down the question in the terms following, *viz.*

WHETHER IT BE MORE EXPEDIENT TO SUPPRESS
POPISH PRACTICES, AGAINST THE DUE AL-
LEGIANCE TO HIS MAJESTY, BY THE STRICT
EXECUTION TOUCHING JESUITES AND SEMI-
NARY PRIESTS: OR TO RESTRAIN THEM TO
CLOSE PRISONS, DURING LIFE, IF NO RE-
FORMATION FOLLOW.

In favour of the first Division.

I.

THERE are not few, who grounding themselves on an antient Proverb, *A dead man bites not*, affirm, that such are dangerous to be preserved alive, who being guilty, condemned, and full of fear, are likely for purchase of Life and Liberty, to enlarge their uttermost in desperate adventures, against their King and Country.

II.

No less is it to be feared, that while the sword of Justice is remiss, in cutting off heinous offenders against the Dignity of the Crown, the mis-led Papal multitude, in the interim, may enter into a jealous suspence, Whether that forbearance proceed from fear of exasperating their desperate humours, or that it is now become questionable, Whether the execution of their Priests, be simply for matter of State, or pretended quarrel for Religion.

III.

And whereas in a remediless inconvenience, it is lawful to use the extremity of Laws against some few, that many by the terror of the example,

may be reformed ; what hope can there be that Clemency may tame their hearts, who interpret His Majesties Grace in transporting their Priests out of His Realm, to be a meer shift to rid the Prisons of those whom Conscience could not condemn of any capital crime.

IV.

Neither are their vaunting, whisperings to be neglected, by which they seek to confirm the fearful souls of their party, and to inveigle the ignorant, doubtful or discontented Persons : for if the glorious extolling of their powerful friends, and the expectance of a golden day, be suffered to win credit with the meaner sort, the relapse cannot be small, or the means easie to reform the error, without a general combustion of the State.

V.

Let experience speak somewhat in this behalf, which hath evidently descryed, with the Current of few years, that the forbearance of severity, hath multiplied their Roll in such manner, that it remains as a Corrosive to thousands of his Majesties well-affected Subjects.

VI.

To what purpose serves it to muster the names of the Protestants, or to vaunt them to be ten for one of the *Roman* Faction? as if bare figures of numeration could prevail against an united party, resolved, and advised before hand, how to turn their faces with assurance, unto all dangers, while in the mean time, the Protestants nestling in vain security, suffer the weed to grow up that threateneth their bane and merciless ruin.

VII.

Some time the Oath of Supremacy choaked their presumptuous imaginations; and yet could not that infernal smoke be smothered, nor the Locusts issuing thereout be wholly cleansed from the face of this land. Now that the temporal power of the King, contained in the Oath of Allegiance, is by the Papal See, and many of the Adorers thereof, impudently avowed to be unlawful; shall the broachers of such Doctrins be suffered to live, yea and to live and be relieved of us, for whose destruction they groan daily?

VIII.

To be a right Popish Priest, in true *English* sense, is to bear the Character of a disloyal *Ren-*

gado of his natural obedience to his Sovereign, whom if by connivency he shall let slip, or chastise with a light hand, what immunity may not traitorous Delinquents in lesser degrees expect, or challenge, after a sort, in equity and justice?

IX.

If there were no Receivers, there would be no Thieves: Likewise if there were no harbourers of the Jesuits, it is to be presumed, that they would not trouble this Isle with their presence, therefore rigor must be extended against the Receiver, that the Jesuits may be kept out of doors; were it then indifferent justice, to hang up the Accessary, and let the Principal go free, namely to suffer the Priest to draw his breath at length, whiles the Entertainer of him under his Roof submits his body to the Executioners hands? without doubt if it be fit to forbear the chief, it will be necessary to receive the second offender into protection, wherewith a mischief must ensue of continual expense, and scandalous restraint of so great a number.

X.

Reputation is one of the principal Arteries of the Common-wealth, which *maxim* is so well known to the Secretaries of the Papacy, that by private Forgeries, and publick impressions of

Calumniations, they endeavour to wound us in that vital part; howsoever therefore some few of that stamp, being better tempered than their fellows in defence of this present Government, have not spared to affirm that *tyranny* is unjustly ascribed thereunto, for so much as freedom of Conscience after a sort may be redeemed for money, notwithstanding there want not many Pamphleters of their side, who opprobriously cast in our teeths, the converting of the penalty inflicted on Recusants, and refusers of the Oath of Allegiance, from the Kings *Exchequer*, to a particular Purse, sure we cannot presume, that those Libellers may be dissuaded from spitting out their venom maliciously against us, when they shall see their Priests mewed up without further process of Law, for either they will attribute this calm dealing to the justice of their cause, the strength of their party, or patience; or that tract of time hath discovered our Laws, importing overmuch sharpness in good policy to be thought fitter for abrogation, by *Non-usance*, than repealed by a publick decree.

XI.

Moreover it is fore-thought, by some, that if these Seminaries be only restrained, they may prove hereafter like a Snake kept in the bosom, such as *Bonner*, *Gardiner*, and others of the same Livery shewed themselves to be, after Liberty

obtained in Queen *Maries* time, and if the loss of those Ghostly Fathers aggrieve them, it is probable, that they will take Arms sooner, and with more courage, to free the living, than to set up a Trophy to the dead.

XII.

Howsoever, the Jesuits band is known in their native soyl, to be defective in many respects, which makes them underlings to the Protestants, as in Authority, Arms, and the protection of the Laws, which is all in all, Nevertheless they insinuate themselves to foreign Princes, favouring their party, with promises of strong assistance at home, if they may be well backed from abroad. To which purpose they have divided the inhabitants of this Realm, into four Sects, whereof ranking their troops in the first place (as due to the pretended Catholicks) they assumed a full fourth part to their property, and of that part again they made a subdivision into two portions, namely, of those that openly renounced the established Church of *England*, and others, whose certain number could not be assigned, because they frequented our service, our Sacraments, reserving their hearts to the Lord God the Pope: The second party they allot to the Protestants, who retain yet (as they say) some reliques of the Church: The third rank and largest was left unto the Puritans, whom they

hate deadly, in respect they will hold no indifferent quarter with Papistry: The fourth and last maniple they assign to the Politicians *huomoni* (say they) *senza dio*, & *senza anima*, men without fear of God, or regard of their Souls, who busying themselves only in matter of State, retain no sense of Religion. Without doubt, if the Authors of this partition have cast their account aright, we must confess that the latter brood is to be ascribed properly unto them; for if the undermining of the Parliament-House, the scandalising of the King in print, who is Gods anointed, and the refusal of natural obedience, be marks of those, that neither stand in awe of God or conscience, well may the Papists boast, that they are assured of the first number, and may presume likewise of the last friendship, when occasion shall be offered; for the preventing of which combination, it is a sure way to cut off the heads that should tie the knot, or at least to brand them with a mark in the forehead before they be dismissed, or (after the opinion of others) to make them unwelcom to the feminine sex, which now with great fervency imbraceth them.

These are for the most part Arguments vented in ordinary Discourse, by many who suppose a Priests breath to be contagious in our English Air.

Others there are, who maintain the second part of the Question with reasons not unworthy of observance.



In favour of the Second Division.

I.

DEATH is the end of temporal woes; but it may in no wise be accounted the Grave of memory; therefore howsoever it is in the power of Justice to suppress the Person of a man, the opinion for which he suffered (conceived truly, or untruly in the hearts of a multitude) is not subject to the edg of any sword, how sharp or keen soever. I confess that the teeth are soon blunted that bite only out of the malice of a singular Faction, but where Poyson is diffused through the Veins of a Common-wealth, with intermixture of blood good and bad; separation is to be made rather by patient evacuation, than by present incision; the greatest biter of a State is Envy, joyned with the thirst of Revenge, which seldom declares it self in plain colours, until a jealousie conceived of personal dangers, breaketh out into desperate resolutions; hence comes it to pass, that when one male-contented member is grieved, the rest of the

body is sensible thereof, neither can a Priest or Jesuite be cut off, without a general murmur of their Seminaries, which being confident in their number, secretly Arm for opposition, or confirmed with their Martyrs Blood (as they are perswaded) resolve by patience and sufferance to glorifie their cause, and merit Heaven. Do we not daily see, that it is easier to confront a private enemy, than a Society or Corporation; and that the hatred of a State is more immortal than the Spleen of a Monarchy, therefore except it be demonstrated, that the whole *Roman* City, which consists not of one brood, may be cut off at the first stroke as one entire head, I see no cause to think our State secured, by sitting on the skirts of some few Seminaries, leaving in the mean time a multitude of Snarlers abroad, who already shew their Teeth, and only wait opportunity to bite fiercely. I will not deny, that, what we fear, we commonly hate, provided always, that no merit hath interceded a reconciliation; for there is great difference between hatred conceived against him that will take away the life, and him that may justly do it, and yet in clemency forbears to put it in effect; for the latter breedeth reverend awe, whereas the former subjecteth to servile fear, always accompanied with desire of innovations, and although it hath been affirmed of the Church of *Rome*, *Quod Pontificium genus semper crudele*, nevertheless out of Charity let us hope, that all Devils are not so black as they are

painted, some, or perhaps many of them there are, whom conscience, or in default thereof, pure shame of the world will constrain to confess that His Majesty most graciously distinguisheth the Theory of Popery; from the Active part thereof, as being naturally inclined, *Parvis peccatis veniam, magnis severitatem commodare, nec pœna semper, sed sæpius pœnitentia contentus esse.*

II.

Mistaking of punishments Legally inflicted, commonly proceeds from fond pitty, or the interest which we have in the same cause; both which beget blind partiality; admit then, that the Papal side, affecting merit by compassion, may be neerly touched with the restraint of their Seminaries, it cannot be denied, I hope, except they had the hearts of Tygers, that in humanity they will prefer their ease of durance, before the rigor of death; and albeit that *Parsons, Bellarmin*, and the Pope himself, constrain their spiritual Children, to thrust their fingers into the fire, by refusing the Oath of Allegiance, notwithstanding we have many testimonies in judicial Courts, and printed Books, that the greater part of them are of that *Theban* hunters mind, who would rather have seen his Dogs cruel acts, then have felt them to his own cost.

Garnet himself also in one of his secret Letters, Lamented, that after his death he should not be

inrolled amongst the Martyrs, because that no matter of Religion was objected against him; yet it plainly appeared in his demeanour, that he would gladly have survived the possibility of that glory, if any such hopes had remained. Neither is it to be presumed, that being in Prison, he would ever have conceived that we durst not touch his Reverence, or that the Law was remiss which had justly condemned him, and left his life to the Kings mercy. It was the distance of place, and not *Parsons* that interpreted the sending over seas of the Priests to be a greater argument of their innocency, than of his Majesties forbearance; For had Father *Parsons* himself been *Coram nobis*, his Song would rather have been of mercy than justice. It is truly said, that we are all instructed better by examples than precepts, therefore if the Laws Printed, and Indictments recorded, cannot controul the Calumniation of those that wilfully will mistake Treason for Religion: By the execution of two or three of that back-biting number, I doubt not but the question may readily be decided.

———*Namque immedicabile vulnus,
Ense tecidendum est, Ne pars sincera tra-*
hatur.

III.

To dally with pragmatical Papists, especially with those that by their example and Counsel per-

vert his Majesties Subjects, I hold it a point of meer injustice; For, what comfort may the good expect, when the bad are by connivency free to speak, and imboldened to put their disloyal thoughts into execution? For explaining therefore of my meaning, it is necessary to have a regard unto the nature of the Kings Liege-People, that are to be reformed by example of justice, and others, Forraigners, who will we, nill we, must be censurers of our actions: It hath been truly observed that the Nations of *Europe*, which are most remote from *Rome*, are more superstitiously inclined to the dreggs of that place, than the nearer Neighbours of *Italy*, whether that humour proceeds from the Complexion of the *Northern* Bodies, which is naturally more retentive of old Customs, than hotter Regions; or that the vices of the City, seated on seven Hills, are by crafty Ministers of that See, concealed from the vulgar sort, I list not now to discuss; but most certain it is, that the people of this Isle exceed the *Romans* in zeal of their profession; in so much, that in *Rome* it self, I have heard the *English* Fugitives taxed by the name of *Pichia pelli Inglesi*, Knock-breasts, *id est*, Hypocrites; now as our Countrey-men take surer holdfast of Papal traditions, than others; so are they naturally better fortified with a Courage to endure Death for the maintenance of that cause; for this Climate is of that temperature out of which *Vegetius* holdeth it fittest to chuse a valiant Soul-

dier, where the Heart finding it self provided with plenty of blood to sustain sudden defects, is not so soon apprehensive of death or dangers, as where the store-house of blood being small, every hazard maketh pale cheeks and trembling hands: *Angli* (say Ancient writers) *bello intrepidi, nec mortis sensu deterrentur*: And thereunto *Botero* the *Italian* beareth witness in his Relations: Many Strangers therefore coming out of Forraign parts among the rarities of *England*, desire to see whether Report hath not been too lavish, in affirming that our condemned Persons yield their Bodies to Death with chearfulness, and were it not that by daily experience we can call our selves to witness of that truth, I could produce the Reverend Judge *Fortescue*, who in commendation of our *English* Laws, made suitable (as he well observeth) to the inbred Conditions of the inhabitants of this soil, avoweth, that the *English* people in tryal for Criminal causes, are not compelled by tortures to confess as in other Nations it is used, for as much as the quality of the *English* is known to be less fearful of death than of torments: for which cause, if the torments of the Civil Law were offered to an innocent person in *England*, he would rather yield himself guilty, and suffer death, than endure the horror of lingring pains. *Insulani plerunque Fures* (saith one) and so true it is, that this Countrey is stained with that imputation, notwithstanding that many are put to death, to the end that others by

their fall, might learn in time to beware: If then it do appear that terrour prevails not, to keep men from offences which are condemned by Law and Conscience, what assurance can there be to scare those who are constantly satisfied in their minds, that their sufferings are either expressly, or by implication for matter of Religion and health of their Souls; in such case to threaten death to English-men, *Quibus nihil interest humi ne sublimi ne putrescant*, is a matter of small consequence, *Purpuratis Gallis, Italis, aut Hispanis, ista minitare*, to a settled resolution it boots not to shew the dreadful visor of death; Menaces to prolong a wearisome life, prevail much more in such cases. Rightly did *Clement* the eighth consider, that by burning two *English-men* in *Rome* for supposed Heresie, he rather impaired his Cause than better'd it; insomuch, that many present at the resolute death of Mr *Marsh*, who was brought to dust in *Campo di Sancta Fiore*, spared not to proclaim him a Martyr, carried away of his ashes for a Relique, and wished their souls in the same place with his; which news brought to the Popes ear, caused him (as it was bruited about *Rome*) solemnly to protest that none of the *English* Nation should publicquely from that time be consumed with fire. On the other side if we read the Volumes written in praise of their Priests Constancy, the *Martyrology* or *Calendar* of *Martyrs*, and pathway of Salvation as it were, chalked out

unto the Papists, by sacrificing their lives for the Pope, we shall find that by taking away of one, we have confirmed and united many, whereof I could give particular instance, if I thought any scruple were made in that point. As for forraign parts which hold with the Papal Supremacy, it is clear that they will be severe and partial judges in this cause; for albeit that here in *England*, it is well known to all true and loyal Subjects, that for matter of *Roman* doctrine, no mans life is directly called into question, but that their disobedience in reason of State is the motive of their persecution; Nevertheless where a great Canker of Christendom is rooted in a contrary opinion, and things in this world are for the most part esteemed by outward appearance, this Land cannot escape malicious scandals, neither shall there be want of Colledges to supply their Faction with Seminaries: Therefore again and again, I say, that if the state of the question were so set, that it were possible by a general execution of the Priests, and their adherents, to end the controversie, I could in some sort with better will, subscribe thereunto: But seeing I find little hope in that course, I hold it safer to be ambitious of the Victory, which is purchased with less loss of blood; and to proceed as *Tully* teacheth his Orator, who when he cannot wholly overthrow his Adversary, yet ought he to do it in some part, and withal endeavour to confirm his own party in the best manner that may be.

IV.

He that forbearcth to sow his ground in expectance of a good Wind or favourable Moon, commonly hath a poor crop and purse ; so shall it fare with this State ; if private whisperings of discontented persons, that never learnt to speak well, be too nicely regarded, yet ought they not to be sleightly set at nought, lest our credit grow light, even in the balance of our dearest friends. The Papistical Libellers inform against us, as if we were desirous to grow fat with sucking of their blood, the very walls of their Seminary Colledg at *Rome* are bedawbed with their lying Phansies, and in every corner the Corner-creepers leave some badg of their malicious spleen against us, crying out of Cruelty and Persecution ; but if the penalty of death be changed into a simple endurance of prison, what moat in our eyes can they find to pull out ? or with what Rhetorick can they defend their obstinate malapertness, which with repaying us ill for good, deserve to have coals of indignation poured upon their heads ? *Visne muliebrie Consilium ?* said *Livia* to *Augustus* ; Let severity sleep a while, and try what alteration the pardoning of *Cinna* may procure ; The Emperor hearkened to her Counsel, and thereby found his enemies mouths stopped, and the fury of their malice abated. Some there are perchance that will term this Clemency Innovation, and vouch

the Precedent of that City, which permitteth none to propound new Laws, that had not a cord about their necks ready for vengeance, if it were found unprofitable; but let such Stoicks know, that there is great difference between the penning of a Law, and advice giving for the manner of executing it; neither (by their leaves) are all innovations to be rejected, for divine *Plato* teacheth us, that in all Common-wealths upon just grounds, there ought to be some changes, and that States-men therein must behave themselves like skilful musicians, *Qui artem musices non mutant, sed musices modum.*

V.

That an evil weed groweth fast, by the example of the new Catholick increase, is clearly convinced; but he that will ascribe this Generation simply to his Majesties heroical vertue of *Clemency*, argueth out of fallacy, which is called *Ignoratio Elenchi*; was not the zeal of many cooled towards the last end of Queen *Elizabeths* Reign? hath not the impertinent heat of some of our own side bereft us of part of our strength, and the Papacy with tract of time gotten a hard skin on their Consciences?

Parva metus primo, mox sese attollit in altum?

But if we will with a better insight behold how this great quantity of spaun is multiplied, we must especially ascribe the cause thereof to their Priests,

who by their deaths prepare and assure more to their sect, than by their lives they could ever persuade; it were incivility to distrust a Friend, or one that hath the shew of an honest man, if he will frankly give his word, or confirm it with an Oath, but when a Protestation is made upon the last gasp of life, it is of great effect to those that cannot gainsay it upon their own knowledg.

The number of Priests which now adays come to make a Tragical conclusion is not great; yet as with one Seal many Patents are sealed; so, with the loss of few lives, numbers of wavering spirits may be gained, *Sanguis Martyrum, Semen Ecclesiæ*: And though those Priests having a disadvantageous cause, are in very deed but counterfeit shadows of Martyrs unto a true understanding, yet will they be reputed for such, by those that lay their Souls in pawn unto their Doctrine, with whom if we list to contend by multitude of voices, we shall be cried down without all peradventure, for the gate of their Church is wide, and many there are that enter thereinto.

VI.

By divers means it is possible to come to one and the self same end; seeing then that the sum of our well-wishing is all one, namely that Popish Priests may have no power to do harm, it is not impertinent to try sundry paths, which may lead

us to the perfecting of our desires. Politicians distinguish *inter rempublicam constitutam & rempublicam constituendam*, according to the several natures whereof Statists are to dispose of their Counsels and Ordinances; were now the Rhemists and Romulists new hatched out of the shell, the former course of severity might soon bury their opinions with their persons, but since the disease is inveterate, variety of medicines is judicially to be applied. The *Romans* did not punish all crimes of one and the self-same nature wth extremity of death; for some they condemned to perpetual Prison; and others they banished into an Island or some remote Countrey; even in the case of Religion they were very tender to dip their fingers in blood; for when *Cato* was Consul (and it seemed good unto the Senate to suppress with violence the disordered Ceremony of the *Bacchanals*, brought by a strange Priest into the City) he withstood that sentence, alledging that there was nothing so apt to deceive men as Religion, which always pretends a shew of divinity: and for that cause, it behoved to be very wary in chastising the professors thereof, lest any indignation should enter into the peoples minds, that somewhat was derogated from the Majesty of God. Others (more freely) have not spared to place Religion, (I mean that Religion which is ignorantly zealous) amongst the kinds of Frenzie, which is not to be cured otherwise than

by time given to divert, or qualifie the fury of the conceit.

Tantum Religio potuit suadere malorum.

VII.

Howsoever in valuing the power of a City or strength of Arguments, quality and worth is to be preferred before number; nevertheless where the uttermost of our force is not known, it imports much to have it conceived; That the multitude stands for us, for doubts and suspicions cast in an enemies way evermore makes things seem greater, and more difficult than they are indeed; we have by Gods mercy the Sword of justice drawn in our behalf, which upon short warning is able to dis-unite the secret underminers of our quiet; we have a King zealous for the house of the Lord, who needeth not to fear lest success in shutting up of Priests, than our late Queen had, in restraining them in *Wisbich* Castle, where lest their Factioned Spirits should grow rusty, they converted their Cancer to fret upon themselves, and vomiting out Gall in *Quod-libets*, shewed that their disease was chiefly predominant in the spleen; what tempests they have raised in their Colledg at *Rome*, their own books, and many travellers can witness; the storm whereof was such, that *Sixtus Quintus* complained seriously of the vexation which he received

oftner from the *English* Scholars, than all the vassals of the Triple Crown; and untruly is the Magistrate noted of negligence or overmuch security, that layeth wait to catch the Foxes, and the little Foxes which spoil the Vineyard, though afterwards without further punishment he reserve them to the day wherein God will take account of their Stewardship; for if *Aristotles* City, defined to be a Society of men assembled to live well, be the same which in our Law hath reference to the maintaining of the people in Peace, so long as we taste of the sweet of a peaceable Government we cannot say but that we live well, and that the City consisting of men and not of walls is happily guided.

VIII.

An Oath is a weak bond to contain him that will for pretended conscience sake hold no faith with Hereticks, or by absolution from a Priest thinketh himself at liberty to fly from any promise or protestation whatsoever; therefore when I remember that *Watson* the Priest, notwithstanding his invectives against the Jesuits, gained liberty to forge his traiterous inventions, and had others of his Society in the complot, I judg it safer to make recluses of them, than to suffer such to dally with us by books, and some idle intelligences cast abroad only as a mist to blear our eyes. But how shall we find the means to apprehend those disguised

Romanists that borrow the shape of Captains, Merchants, Gentlemen, Citizens, and all sorts of people, and by equivocation may deny themselves to be themselves? In answer to this question, I will first shew the reason why they are not pursued and taken, and hereafter make an overture how they may be bolted out of their hutches; the nature of Man howsoever in hot blood, it be thirsty of revenge, in a cold temper it hath a kind of *Nausea* as I may call it, or a distaste of taking away the lives, even of the Nocent, insomuch that in all Assises and Sessions, an offender can hardly be condemned, whom the foolish pitty of man will not after a sort excuse, with laying some imputation on the Judg, part on the Jury, and much on the Accuser; and such is their blind affection, that the prisoner who perhaps was never recommended for handsomness, will be esteemed of them, for one of the properest men in the company; from hence it comes that the name of Sergeant, or Purservant is odious, and the executioner, although he be the hand of justice, is esteemed no better than an enemy of mankind, and one that lost honesty and humanity in his Cradle; Reverend Master *Fox* was wont to say, that spies and accusers were necessary members in a Common-wealth, and deserved to be cherished, but for his own part he would not be any of that number, or with his friends to affect such employments; and albeit that the Law permits, and commands every man to ap-

prehend a Felon, do we not see commonly very many content to stand by and look on while others perform that office? Likewise it is evident, that if such as are tender of their reputations, be very scrupulous personally to arrest men for civil actions of debt, they will be more unwilling instruments of drawing their bodies to the Rack or the Gallows, especially when there is any colour of Religion to be pretended in their defence; the diversity of mens faces is great, but the difference of their minds in this case is more variable, wherein the meanest have thought as free as the highest; besides this, there are too many of the blind commonalty altogether Popish, though indeed they make honourable amends for their treason; verily I know not what misguiding of the mind it is, that maketh men forecast the possibility of alteration in matters of Religion, and for that respect they are exceeding backward in discovery, and laying hands on Seminaries, yea, and are timorous in enacting sharp Laws against them, as those that silently say amongst themselves.

Sors hodierna mihi, cras erit illa tibi.

Some also survive; who, remember that in Queen *Maries* time, the Protestants alledged a Text, that the tares should not be plucked up before harvest, nay, I shall speak a buggs word, there is no small number that stand doubtful whether it be a grateful work to cross Popery,

or that it may be done safely without a foul aspersion of Puritanism, or a shrewd turn of their labours, at some time or other, by which unhappy ambiguity it comes to pass, that these *Animalia Amphibia* (the Priests I mean) that prey on the Souls and bodies of either sex, unattached, revel where they list, though they be more seen than a man dancing in a Net; how much fitter were it for us courageously to invite them to our party, by preaching or confuting them by writing, and unto the State wherein we stand, wisely to apply the saying of the *Assyrian* King to his Souldiers, You are fools (quoth he) if there be any hope in your hearts to redress sorrow by flight, or rather in-deavour to make them fly that are the causers of your grief, assuring your selves, that more perish in flight, than in the Battel, even as many seeking to meet the Papists half way discomfort our own party.

IX.

It followeth now (according to the Method prescribed) that an overture be made to get the Jesuits and their shadows the Priests, into possession; it hath been heretofore recited, that the unwelcom names of a blood-sucker, a busie-body, or a Puritan, have been shrewd Scar-crows unto many honest minds; by abrogating therefore of those or such like Imputations many will be stirred up to

undertake the apprehending of the adversaries unto the truth, especially when for their pains and time employed, they shall deserve and have the title of good Patriots, dutiful Subjects, and zealous Christians, how ready is every common person to carry a Malefactor to the Stocks, rather than unto the Gaol or Execution? and doubtless they will be no less forward to attach a Priest, when they are assured that the worst of his punishment shall be a simple restraint within the walls of an old Castle. A certain kind of people there is, with whom money plays a more forcible Orators part, than any perswasion of the dutiful service which they owe to the Commonwealth; these men will not be negligent to give intelligence, and also to procure it faithfully; provided that reward may help to line their threadbare purses, and exempt them from need to sell liberty unto Seminaries; and where assurance of gain is propounded for discovery, what Master or House-keeper will trust his Servant with keeping of his Priest, or sleep quietly while he is engaged to the danger of a Mercenary? I remember that in *Italy* it was often told me, That the bountiful hand of Sir *Francis Walsingham* made his Intelligences so active, that a Seminary could scarcely stir out of the gates of *Rome* without his privity, which success by mediation of gold, may as readily be obtained from *Syvil, Vallidolid, Doway, Lovaine, Paris*, and any other places, and by fore-warning given of their approach

they may be waited for at the Ports, and from thence soon conveyed to a safe lodging. But whence shall the stream flow that must feed this bounty? it is a doubt easily satisfied, if some thousands of pounds out of the Recusants penalties, be reserved in stock, and committed by his Majesty unto the disposition of zealous distributors, who will not be afraid to conclude *Perdat fiscus, ut capiat Christus*; neither need we seek any further succour to repair decayed Castles, and therein to defray the charge of the Priests, with a sure guard to keep them, than the aforesaid forfeitures that by the Justice of the Law may be collected; which course, if ever it come happily to be entertained, and that Recusancy cease to be an ignominious prey to the subject, the proceedings for Religion shall be less blamed, and perhaps altogether unjustly accused by any graceless *Gretzerus* or *Cacodæmon Johannes*, tincting their Pens in Gall and Vineger; for besides occasion of Calumniation given by sutes of that nature, it is evident that many Recusants that would be indicted for the King, and the effecting the project aforesaid, shall escape without punishment, and be born out against the power of a private person; begging to no other purpose, than hath heretofore been used: and albeit the penalty be rated at 20*l.* a moneth, yet was it never the Law-makers intent, that such as were not able to pay so great a summe, should go scot-free, but that according to the proportion

of their ability, they should do the penance of their Purses ; whereas now if the voice of the people (which is said to be the voice of God) is to be credited, the poorer sort is skipt over, as if they owed no souls to God, nor duty to their Sovereign. A poor Man (saith one) is to be pityed, if he offend through necessity, but if he do amiss voluntarily, he is more severely to be chastised ; for so much as wanting Friends, and means to hear him out, it sheweth that this fault proceeds from presumption.



END OF VOL. II.



